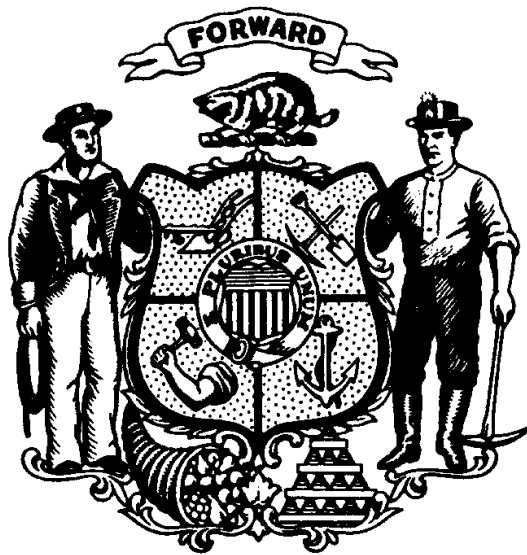


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REVISOR OF STATUTES BUREAU
SUITE 800, 131 WEST WILSON STREET
MADISON, WISCONSIN 53703-3233



State of Wisconsin Revisor of Statutes Bureau

Suite 800, 131 West Wilson Street, Madison, Wisconsin 53703-3233

(608) 266-2011 • Fax (608) 264-6978



Bruce Munson
Revisor of Statutes
bruce.munson@legis.state.wi.us

Gary L. Poulson
Deputy Revisor of Statutes
Assistant Revisor-Administrative Code
gary.poulson@legis.state.wi.us

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EMERGENCY RULES NOW IN EFFECT

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

EMERGENCY RULES NOW IN EFFECT (4)

Agriculture, Trade & Consumer Protection

1. Rules adopted creating **Ch. ATPC 36**, relating to the sale and use of pesticides containing the active ingredient clomazone.

Finding of Emergency

(1) Pesticides containing the active ingredient clomazone are used at spring planting on soybeans, tobacco, peppers, pumpkins, peas, cabbage and cucumbers. Clomazone is an effective herbicide which inhibits the formation of chlorophyll in target weeds.

(2) Clomazone is volatile. Off-target movement from clomazone applications can affect non-target plants located hundreds of feet from the application site. Off-target movement from clomazone applications can damage non-target plants by inhibiting the formation of chlorophyll in those plants.

(3) Off-target movement has occurred in many clomazone applications to date. Non-target plants exposed to off-target movement from clomazone applications turn yellow or white. Damage from 1997 clomazone applications was apparently more severe and long lasting than in prior years. In 1997, the department received 49 complaints of off-target movement to non-target plants. These complaints comprised 20% of all pesticide complaints received by the department in 1997. Department field staff report that these complaints represented only a fraction of the total number of clomazone off-target movement incidents that occurred. Off-target movement incidents have caused widespread public anger and concern, and have impaired public confidence in pesticide applications.

(4) The department proposes to adopt rules restricting the use of clomazone herbicides. The proposed restrictions are reasonably designed to reduce or eliminate damage to non-target plants from clomazone applications. Without these restrictions, continued clomazone applications will likely result in continued incidents of off-target movement and nontarget damage during the 1998 planting and growing season.

(5) Clomazone herbicides are commonly applied during spring planting. The department must adopt restrictions by emergency rule in order for those restrictions to take effect prior to the 1998 spring planting and application period. The department finds that an emergency rule under s. 227.24, Stats., is imperatively required to preserve the public peace and welfare in 1998, pending completion of normal rulemaking procedures under ch. 227, Stats.

Publication Date: March 15, 1998
Effective Date: March 15, 1998
Expiration Date: August 12, 1998
Hearing Date: April 28, 1998

2. Rules adopted creating **ss. ATPC 10.68 and 11.58**, relating to fish farms and imports of live fish and fish eggs.

Exemption From Finding of Emergency

(1) The department of agriculture trade and consumer protection is adopting this emergency rule to implement s. 95.60, Stats., which was created by 1997 Wis. Act 27.

(2) Section 9104(3xr) of 1997 Wis Act 27 authorizes the department to adopt this emergency rule without the normal finding of emergency. It further provides that the emergency rule will remain in effect until January 1, 1999 or until a permanent rule takes effect, whichever comes first.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07(1), 95.60(4s)(e) and (5)

Statutes interpreted: s. 95.60

This emergency rule implements s. 95.60, Stats., by doing all of the following:

Establishing an interim procedure for registering fish farms in 1998. The department plans to adopt permanent rules, which may differ from this emergency rule, relating to registration of fish farms after 1998.

Establishing interim permit requirements for importing live fish or fish eggs into Wisconsin.

Requiring fish farm operators and fish importers to keep records.

Fish Farms

Registration

Under s. 95.60, Stats., as enacted by 1997 Wis. Act 27 effective October 14, 1997, the Department of Agriculture, Trade and Consumer Protection (DATCP) is responsible for registering fish farms in Wisconsin. The new annual registration program replaces an annual licensing program previously administered by the Department of Natural Resources (DNR).

DNR licensed more than 2000 fish farms for calendar year 1997. Fish farms previously licensed by DNR must now be registered with DATCP. DATCP's 1998 registration requirement takes effect immediately after DNR's 1997 license requirement expires.

Registration Procedures: General

This emergency rule establishes interim fish farm registration procedures. Under this emergency rule:

- No person may operate a fish farm without a DATCP registration certificate. A registration certificate expires on December 31, 1998.

- A registration certificate is effective on the day it is issued except that, if a fish farm operator licensed by DNR in 1997 files a

renewal application with DATCP by April 10, 1998, the DATCP registration certificate is retroactive to January 1, 1998.

- Fish farm registrations are not transferable between persons or locations. A person who operates 2 or more fish farms at non-contiguous locations must obtain a separate registration certificate for each location.

Registration Categories

A fish farm operator must hold a type A, B, C or D registration certificate for that fish farm:

- A type A registration is normally required for a fish farm at which the operator does any of the following:

- *Hatches fish or produces fish eggs at that fish farm for sale or trade to any person.

- *Allows public fishing, for a fee, for fish hatched at that fish farm.

- A type B registration is normally required if the fish farm operator does any of the following and does not hold a type A registration:

- *Allows public fishing at the fish farm for a fee.

- *Sells or trades fish, from the fish farm, to any person.

- A type C registration authorizes the registrant to operate a fish farm. It does not authorize activities for which a type A or B registration is required, except that a type C registrant may do either of the following without a type A or B registration:

- *Sell minnows to any person

- *Sell fish or fish eggs to a type A registrant.

- A type D registration authorizes the registrant to sell or trade fish from a fish farm without a type A or B registration if all of the following apply:

- *The operator does not hatch fish, produce fish eggs or permit public fishing for a fee at that fish farm.

- *The fish farm consists solely of ponds used to hold or grow fish.

- *The operator holds a type A or B registration certificate for another fish farm located on a nonadjacent parcel of land.

Registration Fees

This emergency rule establishes the following registration fees:

· Type A registration	\$50.00
· Type B registration	\$25.00
· Type C registration	\$ 5.00
· Type D registration	\$ 5.00

School systems operating fish farms must register with DATCP but are exempt from fees. The operator of a fish farm registered for less than a full year must pay the full year's fee.

If an operator was licensed by DNR in 1997, but files a renewal application with DATCP after April 10, 1998, the operator must pay a late renewal fee equal to 20% of the registration fee or \$5.00, whichever is greater.

Deadlines for DATCP Action on Registration Applications

If a person licensed by DNR to operate a fish farm in 1997 applies to register that fish farm with DATCP, DATCP must grant or deny the application within 30 days after the applicant files a complete application, including the correct fee, with DATCP. DATCP will deny the application, if the applicant has not filed a 1997 "private fish hatchery annual report" with the department of natural resources.

If a person applying to register a fish farm was not licensed by the department of natural resources to operate that fish farm in 1997, DATCP must grant or deny that person's registration application within 30 days after all of the following occur:

- The applicant files a complete application including the correct fee.

- DNR informs DATCP that DNR has approved the facility.

Recordkeeping

This emergency rule requires a fish farm operator to keep the following records for all fish and fish eggs which the operator receives from or delivers to another person:

- The name, address, and fish farm registration number if any, of the person from whom the operator received or to whom the operator delivered the fish or fish eggs.

- The date on which the operator received or delivered the fish or fish eggs.

- The location at which the operator received or delivered the fish or fish eggs.

- The size, quantity and species of fish or fish eggs received or delivered.

A fish farm operator must make these records available to DATCP, upon request, for inspection and copying.

Denying, Suspending or Revoking a Registration

DATCP may deny, suspend or revoke a fish farm registration for cause, including any of the following:

- Violating ch. 95, Stats., or applicable DATCP rules.

- Violating the terms of the registration

- Preventing a DATCP employee from performing his or her official duties, or interfering with the lawful performance of those duties.

- Physically assaulting a DATCP employee performing his or her official duties.

- Refusing or failing, without just cause, to produce records or respond to a DATCP subpoena.

- Paying registration fees with a worthless check.

Fish Imports

Import Permit Required

This rule prohibits any person from importing into this state, without a permit from DATCP, live fish or fish eggs for any of the following purposes:

- Introducing them into the waters of the state.

- Selling them as bait, or for resale as bait.

- Rearing them at a fish farm, or selling them for rearing at a fish farm.

A copy of the import permit must accompany every import shipment. An import permit may authorize multiple import shipments. There is no fee for an import permit. A person importing a non-native species of fish or fish eggs must also obtain a permit from the department of natural resources.

Import Permit Contents

An import permit must specify all of the following:

- The expiration date of the import permit. An import permit expires on December 31 of the year in which it is issued, unless DATCP specifies an earlier expiration date.

- The name, address and telephone number of the permit holder who is authorized to import fish or fish eggs under the permit.

- The number of each fish farm registration certificate, if any, held by the importer.

- Each species of fish or fish eggs which the importer is authorized to import under the permit.

- The number and size of fish of each species, and the number of fish eggs of each species, that the importer may import under the permit.

- The purpose for which the fish or fish eggs are being imported.

- The name, address and telephone number of every source from which the importer may import fish or fish eggs under the permit.

- The name, address, telephone number, and fish farm registration number if applicable, of each person in this state who may receive an import shipment under the permit if the person receiving the import shipment is not the importer.

Applying for an Import Permit

A person seeking an import permit must apply on a form provided by DATCP. The application must include all of the following:

- All of the information which must be included in the permit (see above).
- A health certificate for each source from which the applicant proposes to import fish or fish eggs of the family salmonidae.

DATCP must grant or deny a permit application within 30 days after it receives a complete application and, in the case of non-native fish DNR approval.

Denying, Suspending or Revoking an Import Permit

DATCP may deny, suspend or revoke an import permit for cause, including any of the following:

- Violating applicable statutes or rules.
- Violating the terms of the import permit, or exceeding the import authorization granted by the permit.
- Preventing a department employee from performing his or her official duties, or interfering with the lawful performance of his or her duties.
- Physically assaulting a department employee while the employee is performing his or her official duties.
- Refusing or failing, without just cause, to produce records or respond to a department subpoena.

Import Records

A person importing fish or fish eggs must keep all of the following records related to each import shipment, and must make the records available to the department for inspection and copying upon request:

- The date of the import shipment.
- The name, address and telephone number of the source from which the import shipment originated.
- The name, address, telephone number, and fish farm registration number if applicable of the person receiving the import shipment, if the person receiving the import shipment is not the importer.
- The location at which the import shipment was received in this state.
- The size, quantity and species of fish or fish eggs included in the import shipment.

Salmonidae Import Sources: Health Certificates

DATCP may not issue a permit authorizing any person to import fish or fish eggs of the family salmonidae (including trout, salmon, grayling, char, Dolly Vardon, whitefish, cisco or inconnu) unless a fish inspector or an accredited veterinarian certifies, not earlier than January 1 of the year preceding the year in which the applicant applies for the permit, that the fish and fish eggs from the import source were determined to be free of all of the following diseases:

- Infectious hematopoietic necrosis.
- Viral hemorrhagic septicemia.
- Whirling disease, except that eggs from wild stocks need not be certified free of whirling disease.
- Enteric redmouth.
- Ceratomyxosis.

A fish inspector issuing a health certificate must be a fish biologist who is certified, by the American Fisheries Society or the state of origin as being competent to perform health inspections of fish.

The accredited veterinarian or fish inspector must issue a health certificate in the state of origin, based on a personal inspection of the fish farm from which the import shipment originates. In the inspection, an accredited veterinarian or a fish inspector must examine a random statistical sample of fish drawn from each lot on the fish farm. From each lot, the veterinarian or inspector must

examine a number of fish which is adequate to discover, at the 95% confidence level, any disease that has infected 5% of the lot.

Publication Date: March 16, 1998

Effective Date: March 16, 1998

Expiration Date: See section 9104 (3xr) 1997 Wis. Act 27

Hearing Date: April 27, 1998

3. Rules adopted amending s. ATCP 75.015 (7)(c), relating to the retail food establishment license exemption for restaurant permit holders.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) currently licenses and inspects retail food stores (grocery stores, convenience stores, bakeries, delicatessens, etc.) under s. 97.30, Stats., and ch. ATCP 75, Wis. Adm. Code.

The state of Wisconsin department of health and family services (DHFS) currently licenses (permits) and inspects restaurants under subch. VII of ch. 254, Stats., and ch. HFS 196, Wis. Adm. Code.

Recently, many retail food stores have added restaurant operations, and vice versa.

Under current rules, a person who operates a food store and restaurant at the same location may be subject to duplicate regulation by DATCP and DHFS. The operator may be subject to duplicate licensing, duplicate license fee payments, and duplicate inspection based on different (and sometimes inconsistent) rules.

The current duplication is unnecessary, confusing, and wasteful of public and private resources. This temporary emergency rule is needed to eliminate duplication, and protect public welfare, during the food store license year that begins on July 1, 1998. DATCP also plans to adopt a permanent rule according to normal rulemaking procedures under ch. 227, Stats.

This emergency rule applies to food store licenses issued by DATCP, but does not apply to food store licenses issued by agent cities and counties under s. 97.41, Stats. DATCP plans to adopt permanent rules for all food store licenses, whether issued by DATCP or by agent cities or counties, effective July 1, 1999.

Publication Date: July 1, 1998

Effective Date: July 1, 1998

Expiration Date: November 28, 1998

4. Rules adopted amending ss. ATCP 81.50 (2), 81.51 (2), and 81.52 (2), relating to grade standards for colby and monterey (jack) cheese.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) finds that an emergency exists and that an emergency rule is necessary for economic reasons to protect the public welfare of the citizens of Wisconsin. The facts constituting the emergency are as follows:

(1) DATCP has adopted standards for grades of cheese manufactured and sold in Wisconsin under s. 97.177, Stats., and ch. ATCP 81, Wis. Adm. Code. Any cheese which carries a state grade mark must conform to the standards and characteristics of the labeled grade.

(2) Under current rules, colby and monterey (jack) cheese must contain numerous mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

(3) Changes in cheese manufacturing technology, packaging and equipment have made it extremely difficult for many processors and packagers to achieve the numerous mechanical openings or open body character required by these top two grade categories. A majority of today's wholesale buyers and packagers prefer a closed body cheese for a variety of reasons, including ease of shredding and the ability to package "exact-weight" pieces with minimal variation and waste.

(4) Currently, a closed body cheese may be labeled or sold as Wisconsin grade B or "not graded." It cannot be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand), nor can it command the premium price associated with these top two grade categories.

(5) Wisconsin is the only state with its own grade standards for colby and monterey (jack) cheese. The United States Department of Agriculture modified its grade standards for colby and monterey jack cheese in 1995 and 1996, respectively, in response to industry requests to allow an open or closed body. Buyers who cannot obtain the desired graded product in Wisconsin will likely switch to suppliers from other states. Once customers are lost they are difficult to regain.

(6) Wisconsin's dairy industry plays a major role in our state's economy. Approximately \$3 billion or 90% of Wisconsin's milk production goes into the manufacture of cheese. Lost business revenues harm the dairy industry, cause increased unemployment, and have a negative impact on the state's economy.

(7) Pending the adoption of rules according to the normal administrative rulemaking procedures, it is necessary to adopt emergency rules under s. 227.24, Stats., to protect the public welfare based on an economic emergency for the state's dairy industry and the subsequent impact on the general economy and citizens of this state.

Publication Date: August 8, 1998
Effective Date: August 8, 1998
Expiration Date: January 4, 1999
Hearing Date: September 14, 1998
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Commerce

(Petroleum Environmental Cleanup Fund, Ch. ILHR 47)

Rules adopted revising **ch. ILHR 47**, relating to the petroleum environmental cleanup fund.

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

The facts constituting the emergency are as follows. Under ss. 101.143 and 101.144, Stats., the Department protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. Claims made against the PECFA fund are currently averaging over \$15,000,000 per month. Approximately \$7,500,000 per month is allotted to the fund for the payment of claims. The fund currently has a backlog of \$250,000,000 representing almost a 30-month backlog of payments to be made to claimants. Immediate cost saving measures must be implemented to mitigate this problem.

The rules make the following changes to manage and reduce remediation costs:

Administrative Elements.

These changes include updating the scope and coverage of the rules to match current statutes, clarifying decision making for remedial action approvals and providing new direction to owners, operators and consulting firms.

Progress Payments.

Progress payments are proposed to be reduced for some owners and sites. The criteria that trigger payments will now also be based on outcomes. The timing of payments from the fund is designed to benefit those that get sites successfully remediated and to create incentives for the use of the flexible closure tools and natural attenuation tools that were created by the Department of Natural Resources. Applications submitted before the effective date of the new rules would still be subject to the current rules.

Remedial Alternative Selection.

These provisions would create two different paths for funding for sites. Through the use of a group of environmental factors, the risk of a site will be determined. Active treatment systems that use mechanical, engineered or chemical approaches would not be approved for a site without one or more environmental factor present. Approved treatments for sites without environmental factors would be limited to non-active approaches, excavation, remediation by natural attenuation and monitoring of the contamination. The five environmental factors are:

- A documented expansion of plume margin;
- A verified contaminant concentration in a private or public potable well that exceeds the preventive action limit established under ch. 160;
- Soil contamination within bedrock or within 1 meter of bedrock;
- Petroleum product, that is not in the dissolved phase, present with a thickness of .01 feet or more, and verified by more than one sampling event; and
- Documented contamination discharges to a surface water or wetland.

Reimbursement Provisions.

Several incentives are added to encourage owners and consultants to reduce costs whenever possible. Provisions are added for the bundling of services at multiple sites to achieve economy of scale and for using a public bidding process to reduce costs. In addition, owners are encouraged to conduct focused remediations that utilize all possible closure tools. To encourage this approach, if a site can be investigated and remedied to the point of closure for \$80,000 or less, the consultant can complete the action without remedial alternative approvals or the risk of the site being bundled or put out for bidding. The consultant is provided additional freedom under the structure of the fund in order to facilitate remediation success. Special priority processing of these cost-effective remediations would also be provided.

Review of Existing Sites.

These changes give the Department more ability to redirect actions and impose cost saving measures for sites that are already undergoing remedial actions. Reevaluations including, the setting of cost caps would be done on sites chosen by the Department.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

Publication Date: April 21, 1998
Effective Date: April 21, 1998
Expiration Date: September 18, 1998
Hearing Date: May 29, 1998

EMERGENCY RULES NOW IN EFFECT (2)

Department of Commerce

(Building & Heating, etc., Chs. Comm/ILHR 50-64)

(Uniform Multifamily Dwellings, Ch. ILHR 66)

1. Rules adopted revising **chs. Comm 51, ILHR 57 and 66**, relating to commercial buildings and multifamily dwellings.

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that adoption of the rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under ss. 101.02 (15), 101.12, and 101.971 to 101.978, Stats., the Department protects public health, safety, and welfare by promulgating construction requirements for commercial and public buildings, including multifamily dwellings. Present requirements include methods for stopping fire in one area of a building from spreading to another area through service openings in walls, floors, and ceilings, such as penetrations for plumbing and electrical components. The methods that were specified have been shown to fail under fire testing conditions.

The proposed rule impacts all public buildings, which includes multifamily dwellings, and replaces the failed firestopping methods with techniques, materials, and methods that have been tested and nationally recognized. The rule essentially mandates use of tested and listed fire-stop systems for nearly all penetrations of every wall, floor, and ceiling that is required to provide area-separation protection consisting of either a fire-protective membrane or fire-resistive rated construction. The rule also clarifies some problematic, technical provisions that have resulted in confusion and unnecessary costs. Without the proposed rule revisions, firestopping methods that have been proven to be ineffective would still be allowed to be utilized, thereby putting public safety and health at risk.

Pursuant to s. 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

Publication Date: January 28, 1998
Effective Date: January 28, 1998
Expiration Date: June 27, 1998
Hearing Date: March 11, 1998
Extension Through: October 24, 1998

2. Rule adopted revising **ch. ILHR 57**, relating to an exemption of multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators from the accessibility laws.

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public peace, health, safety and welfare. The facts constituting the emergency are as follows:

Chapter ILHR 57, subchapter II, Wis. Adm. Code, establishes design and construction requirements for accessibility in covered multifamily housing as defined in s. 101.132 (1), Stats., formerly s. 106.04 (2r) (a) 4., Stats. The design and construction requirements in ch. ILHR 57, subchapter II, are based on the multifamily accessibility law in s. 101.132, Stats. The state law on accessibility in covered multifamily housing is substantially equivalent to the federal Fair Housing law of 1988. The proposed changes in ch.

ILHR 57, subchapter II, are in response to 1997 Wis. Act 237 that exempts multilevel multifamily dwelling units without elevators from the multifamily accessibility law. This state law change does not conflict with the federal Fair Housing law since the federal Fair Housing law does not cover multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators.

The proposed rule eliminates only those sections requiring access to and accessible features within multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators. If the rules are not revised an inconsistency between the statutes and the administrative rules would result. This inconsistency may cause confusion in application and enforcement within the construction industry and may result in construction delays, which may be costly.

Publication Date: June 17, 1998
Effective Date: June 17, 1998
Expiration Date: November 14, 1998

EMERGENCY RULES NOW IN EFFECT

Commerce

(Rental Unit Energy Efficiency, Ch. Comm 67)

Rules were adopted revising **ch. Comm 67**, relating to rental unit energy efficiency.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under s. 101.122, Stats., Department protects public health, safety, and welfare by promulgating energy efficiency requirements for rental units. 1997 Wis. Act 288 amends s. 101.122, Stats., to change the scope of the rules that the Department develops under that law. Those portions of the Act were effective the day after publication, and the rules adopted by the Department under the authority of that law are hereby amended to be consistent with 1997 Wis. Act 288.

This emergency rule excludes the following buildings from the rental unit energy efficiency

- Buildings of one or two rental units that were constructed after December 1, 1978.
- Buildings of three or more rental units that were constructed after April 15, 1976.
- Condominium buildings of three or more dwelling units.

This rule also limits the application of rental unit energy efficiency requirements to the following items:

- Attics
- Furnaces and boilers
- Storm windows and doors, with an option to meet an air infiltration performance standard for the thermal envelope of the building
- Sill boxes
- Heating and plumbing supply in unheated crawlspaces
- Shower heads

This rule also eliminates the expiration of the certificate of code compliance after 5 years.

Publication Date: June 30, 1998
Effective Date: June 30, 1998
Expiration Date: November 27, 1998
Hearing Date: August 14, 1998

EMERGENCY RULES NOW IN EFFECT

Commerce

(Barrier-Free Design, Ch. Comm 69)

Rule adopted creating s. **Comm 69.18 (2) (a) 2. c.**, relating to vertical access to press box facilities.

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public peace, health, safety and welfare. The facts constituting the emergency are as follows:

Chapter Comm 69, establishes design and construction requirements for accessibility in all buildings and facilities. Chapter Comm 69 is based on the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Titles II and III of the federal Americans with Disabilities Act. A number of public school districts are in the process of constructing press boxes at athletic fields. In accordance with both the federal and state rules, an elevator must be used to provide access to a press box. This requirement causes a serious financial hardship on the school districts, since the press boxes involved will be very small and will accommodate only a few people. The federal ADAAG standards are in the process of being revised to exempt state and local government buildings that are not open to the general public from providing elevator access to floor levels that are less than 500 square feet and accommodate less than 5 persons.

The Joint Committee for Review of Administrative Rules (JCRAR) held a hearing on March 31, 1998 to receive public comments on the rules in chapter Comm 69 that requires vertical access to press box facilities. On May 6, 1998, the JCRAR held an executive session to consider this issue and has requested the agency to promulgate an emergency rule adopting the federal exemption for certain publicly controlled facilities, such as press boxes, from vertical access for people with disabilities. The emergency rule is to be promulgated no later than May 15, 1998.

The proposed rule eliminates the requirement that in government owned or operated buildings an elevator must be used to provide access to certain small areas with low capacity. The emergency rule benefits not only school districts, but other small state and local government buildings as well.

Publication Date: May 15, 1998
Effective Date: May 15, 1998
Expiration Date: October 12, 1998
Hearing Date: August 31, 1998

EMERGENCY RULES NOW IN EFFECT

Department of Corrections

Rule adopted amending s. **DOC 328.22 (5)**, relating to custody and detention of felony probationers and parolees.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: the Milwaukee County Jail has experienced severe overcrowding. The Department of Corrections and the Milwaukee County Sheriff have worked cooperatively to alleviate the crowded

conditions that continue to prevail. This rule amendment will serve the purpose of further alleviating overcrowding by allowing any felony probationer to be detained in a Department of Corrections institution. Presently, only felony probationers with imposed and stayed sentences may be detained in a Department facility.

The Wisconsin Supreme Court rule in *Sullivan v. Kliesmet*, that the Sheriff of Milwaukee may refuse to accept Department of Corrections detainees when severe overcrowding results in dangerous conditions. The Supreme Court delayed the effective date of the Kliesmet decision one year or until June 25, 1998.

Under the authority vested in the Department of Corrections by ss. 227.11 (2), and 973.10, Stats., the Department of Corrections hereby amends s. **DOC 328.22 (5)**, relating to the custody and detention of felony probationers and parolees.

Publication Date: March 23, 1998
Effective Date: March 23, 1998
Expiration Date: August 20, 1998
Hearing Date: June 26, 1998
Extension Through: October 18, 1998

EMERGENCY RULES NOW IN EFFECT

Financial Institutions

(Division of Securities)

Rules adopted revising **chs. DFI-Sec 1 to 9**, relating to federal covered securities, federal covered advisers and investment adviser representatives.

Finding of Emergency

The Department of Financial Institutions, Division of Securities, finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows.

Recently enacted legislation in 1997 Wis. Act 316 that is scheduled for publication on July 8, 1998 to become effective the following day on July 9, 1998 made a number of changes to the Wisconsin Uniform Securities Law, principally to conform to changes required under federal legislation in the National Securities Markets Improvement Act of 1996 ("NSMIA").

NSMIA preempted state securities law regulation in two principal areas: (1) prohibiting state securities registration and exemption requirements from being applicable to categories of so-called "federal covered securities," but permitting states to establish certain notice filing requirements (including fees) for such "federal covered securities;" and (2) prohibiting state securities licensing requirements from being applicable to certain investment advisers meeting criteria to qualify as a "federal covered adviser," but permitting states to establish certain notice filing requirements (including fees) for those federal covered advisers that have a place of business in Wisconsin and more than 5 Wisconsin clients.

The legislation in 1997 Wis. Act 316 established notice filing requirements for "federal covered securities" and "federal covered advisers," and in addition, established statutory requirements for the licensing of "investment adviser representatives" (who previously were subject only to a qualification" process in Wisconsin). Comprehensive administrative rules are needed immediately to implement the statutory changes contained in 1997 Wisconsin Act 316, particularly relating to the filing requirements for federal covered securities, federal covered advisers and investment adviser representatives. In order to have such rules in place contemporaneously with the effectiveness of 1997 Wis. Act 316, these emergency rules are adopted on an interim basis until identical

permanent rules can be promulgated using the standard rule-making procedures.

Publication Date: July 7, 1998
Effective Date: July 9, 1998
Expiration Date: December 6, 1998
Hearing Date: September 24, 1998

EMERGENCY RULES NOW IN EFFECT

Health and Family Services (Community Services, Chs. 30—)

Rule was adopted amending s. HFS 94.24 (2)(e), relating to searches of rooms and personal belongings of patients at the Wisconsin Resources Center.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules included in this order is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department operates the Wisconsin Resource Center near Oshkosh, a mental health treatment facility for two groups of people: (1) inmates of correctional institutions whose behavior presents a serious problem to themselves or others in state correctional facilities and whose mental health treatment needs can be met at the Center, and (2) persons who have been found by a court or jury under s. 980.05, Stats., to be sexually violent persons and who have therefore been committed to the custody of the Department under s. 980.06, Stats., for control, care and treatment, whose commitment order specifies institutional care and who have been placed by the Department at the Center under s. 980.065, Stats. About 60% of the 370 patients at the Center are inmates of correctional institutions and about 40% are persons committed to the Department under ch. 980, Stats.

The security, discipline, care and treatment of inmates of correctional institutions at the Wisconsin Resource Center are governed by administrative rules of the Wisconsin Department of Corrections. Chapter HFS 94, the Department's rules relating to the rights of patients receiving treatment for a mental illness, a developmental disability, alcohol abuse or other drug abuse, applies to the inmates of correctional institutions at the Center only in relation to patient rights specified in s. 51.61 (1) (a), (d), (f), (g), (h), (j) and (k), Stats. However, the entire ch. HFS 94 applies to patients at the Center who are there under a ch. 980, Stats., commitment.

At the Wisconsin Resource Center staff until recently have been making random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats. A patient has challenged the practice in a lawsuit, claiming that it violates s. HFS 94.24 (2) (e) which permits a search only when there is documented reason to believe that security rules have been violated, unless the search is of rooms and belongings in a forensic unit. Patients at the Center who are there under ch. 980, Stats., commitments are not residents of a forensic unit; a commitment under ch. 980, Stats., is considered a civil commitment. The court handling the case is expected to rule in favor of the patient. Therefore, the Center has temporarily suspended random searches, pending amendment of the rule.

This order amends s. HFS 94.24 (2) (e) to permit searches of the rooms and personal belongings of not only inpatients of forensic units but also inpatients of a secure mental health unit or facility under s. 980.065, Stats., and similar inpatients of the maximum security facility at the Mendota mental health institute, and not only when there is documented reason to believe that security rules have been violated but under other circumstances as well as specified in

written facility policies. This change will permit the Wisconsin Resource Center to resume random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats.

This rule change is being promulgated on the advice of counsel by emergency order because of the length of the permanent rulemaking process and because random searches of the rooms and belongings of ch. 980, Stats., patients at the Wisconsin Resource Center need to be resumed without delay to protect other patients and staff and, in the long run, the general public.

These patients have been committed or are being detained because there is probable cause to believe they are dangerous individuals who are disposed to commit future acts of sexual violence. Many have documented histories of other types of criminal activity, including fraud, theft and physical assault. Many also have a history of drug/alcohol dependence and gang activity. The intent of ch. 980, Stats., is to protect the public and provide treatment to this patient population. The major difference between this population and other patient populations is this population has a significantly higher percentage of individuals diagnosed with anti-social personality disorders and, as such, they have consistently shown deliberate disregard for the rights of others and a willingness to break the law.

The Wisconsin Resource Center is responsible for maintaining a therapeutic and safe environment for its patients. Yet the ch. 980 patients in general have consistently found 'creative' ways to break facility rules. Therefore, unless there are effective mechanisms, such as random searches, in place to monitor their activity, these patients will use their rights to continue their criminal activity and to violate the rights of others.

Random searches help the Center identify and prevent numerous violations of facility rules that are safety and security related or countertherapeutic to the patients. These searches can also deter patients from harboring dangerous items in their rooms. These could go undetected and be at some point used in harming another person or hinder or block the individual's treatment. They include weapons, drugs, indications of planning underway to rape or assault another patient or a staff member, sexually explicit material which may interfere with treatment progress, and stolen property including credit cards.

A facility cannot effectively treat these patients without the ability to effectively monitor and confront criminogenic behaviors and patterns. Random searches are a very effective treatment tool in this respect. They also reduce the likelihood of false positives for releasing or discharging a patient when evaluating for continued pertinence of the commitment criteria.

Publication Date: August 15, 1998
Effective Date: August 15, 1998
Expiration Date: January 11, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Health and Family Services (Health, Chs. HSS/HFS 110—)

1. Rules adopted revising s. HFS 196.03 (22), relating to an exemption from regulation as a restaurant.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The current Budget Act, 1997 Wisconsin Act 27, effective October 14, 1997, created s. 254.61 (5) (g), Stats., to exempt a concession stand at a "locally sponsored sporting event" from being regulated under ch. HFS 196 as a restaurant. Following enactment

of the State Budget, the Department received several inquiries from its own region-based inspectors and local health departments serving as the Department's agents for enforcement of the Department's environmental sanitation rules, including rules for restaurants, about the meaning of "locally sponsored sporting event." What did the term cover? Did it cover food stands at facilities of locally-owned sports franchises? Were these now to be exempt from regulation under the restaurant rules?

This rulemaking order adds the new exemption to the Department's rules for restaurants and, in this connection, defines both "locally sponsored sporting event" and "concession stand." The order makes clear that the exemption refers only to concession stands at sporting events for youth, that is, for persons under 18 years of age. That interpretation is supported by the statutory phrase, "such as a little league game," that follows the term, "locally sponsored sporting event," in s. 254.61 (5) (g), Stats. The order further narrows the applicability of the exemption by building into the definitions the Department's understanding of who organizes or sponsors an exempt sporting event and on whose behalf a concession stand at the event is operated.

Although the Department's understanding of what "locally sponsored sporting event" should be taken to mean has been communicated to its field-based inspectors and agent local health departments, this is no more than an interpretive guideline, lacking the force of law, until the Department has set out that understanding in its rules for restaurants. Because the process for making the permanent rule change will take several months, the Department is publishing the rule change now by emergency order in the interests of protecting the public's health. The emergency rule order will ensure that, pending promulgation of the permanent rule change, there will be uniform statewide enforcement of the statute change that will prevent any local inspector from exempting from regulation food stands at locally sponsored sporting events for adults.

Publication Date: March 14, 1998
Effective Date: March 14, 1998
Expiration Date: August 11, 1998
Hearing Date: May 11, 1998
Extension Through: October 9, 1998

2. Rules adopted revising **ch. HFS 119**, relating to the Health Insurance Risk-Sharing Plan.

Finding of Emergency

The Legislature in s. 9123 (4) of 1997 Wis. Act 27 permitted the Department to promulgate any rules that the Department is authorized or required to promulgate under ch. 149, Stats., as affected by Act 27, by using emergency rulemaking procedures except that the Department was specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state.

HIRSP provides a major medical type of coverage for persons not eligible for Medicare (Plan 1) and a Medicare supplemental type of coverage for persons eligible for Medicare (Plan 2). Plan 1 has a \$1,000 deductible. Plan 2 has a \$500 deductible. On December 31, 1997 there were 7,318 HIRSP policies in effect, 83 % of them Plan 1 policies and 17% Plan 2 policies. HIRSP provides for a 20% coinsurance contribution by plan participants up to an annual out-of-pocket maximum of \$2,000 (which includes the \$1,000 deductible) per individual and \$4,000 per family for major medical

and \$500 per individual for Medicare supplement. There is a lifetime limit of \$1,000,000 per covered individual that HIRSP will pay for all illnesses.

There is provision under HIRSP for graduated premiums and reduced deductibles. Plan participants may be eligible for graduated premiums and reduced deductibles if their household income for the prior calendar year, based on standards for computation of the Wisconsin Homestead Credit, was less than \$20,000.

The current Budget Act, 1997 Wis. Act 27, transferred responsibility for the Health Insurance Risk-Sharing Plan (HIRSP) from the Office of Commissioner of Insurance to the Department of Health and Family Services effective January 1, 1998. The transfer included the administrative rules that the Office of Commissioner of Insurance had promulgated for the administration of HIRSP. These were numbered ch. Ins 18, Wis. Adm. Code. The Department arranged for the rules to be renumbered ch. HFS 119, Wis. Adm. Code, effective April 1, 1998, and, at the same time, because the program statutes had been renumbered by Act 27, for statutory references in ch. HFS 119 to be changed from subch. II of ch. 619, Stats., to ch. 149, Stats.

Act 27 made several other changes in the operation of the Health Insurance Risk-Sharing Plan. The Department through this rulemaking order is amending ch. HFS 119 by repeal and re-creation mainly to make the related changes to the rules, but also to update annual premiums for HIRSP participants in accordance with authority set out in s. 149.143 (3)(a), Stats., under which the Department may increase premium rates during a plan year for the remainder of the plan year.

Major changes made in the rules to reflect changes made by Act 27 in the HIRSP program statute are the following:

- Transfer of plan administration responsibility from an "administering carrier" selected by the Board of Governors through a competitive negotiation process to Electronic Data Systems (EDS), the Department's fiscal agent for the Medical Assistance Program, called in the revised statute the "plan administrator";

- Deletion of a physician certification requirement in connection with applications of some persons for coverage;

- Addition of alternatives to when eligibility may begin, namely, 60 days after a complete application is received, if requested by the applicant, or on the date of termination of Medical Assistance coverage;

- Addition of a reference to how creditable coverage is aggregated, in relation to eligibility determination;

- Modification of the respective roles of the state agency, now the Department, and the Board of Governors;

- Clarification that the alternative plan for Medicare recipients reduces the benefits payable by the amounts paid by Medicare;

- Modification of cost containment provisions to add that for coverage services must be medically necessary, appropriate and cost-effective as determined by the plan administrator, and that HIRSP is permitted to use common and current methods employed by managed care programs and the Medical Assistance program to contain costs, such as prior authorization;

- Continuation of an alternative plan of health insurance that has a \$2500 deductible (this was added by emergency order effective January 1, 1998);

- Addition of timelines to the grievance procedure for plan applicants and participants, and a provision to permit the Department Secretary to change a decision of the Board's Grievance Committee if in the best interests of the State; and

- Establishment of total insurer assessments and the total provider payment rate for the period July 1, 1998 to December 31, 1998.

Publication Date: July 1, 1998
Effective Date: July 1, 1998
Expiration Date: November 28, 1998

EMERGENCY RULES NOW IN EFFECT (5)

Natural Resources

(Fish, Game, etc., Chs. NR 1--)

1. A rule was adopted revising s. NR 45.10 (3) and (4), relating to reservations on state parks, forests and other public lands and waters under the Department's jurisdiction.

Exemption From Finding of Emergency

1997 Wis. Act 27, section 9137 (1) authorizes the department to promulgate these rules without a finding of emergency under s. 227.24, Stats.

Summary of Rules:

1. Creates a process for accepting telephone reservations for department camp sites.
2. Establishes time frame for making reservations.

Publication Date: December 15, 1997

Effective Date: April 1, 1998

Expiration Date: April 1, 1999

Hearing Date: January 12, 1998

2. Rule was adopted amending s. NR 20.037 (2), relating to readjustment of daily bag limits for walleye in response to tribal harvest.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rule is necessary for the immediate preservation of the public health, safety or welfare. A statement of facts constituting the emergency is:

The Chippewa bands set harvest goals for walleye on several waters each year prior to the spring spearing season. The Department then reduces daily bag limits on individual waters for anglers in response to these harvest goals. Frequently, the Chippewa harvest goals are not met on many waters and notification that harvesting is complete is not given to the Department. The unused tribal harvest results in unnecessarily low walleye bag limits for anglers. On waters where Chippewa harvest goals are established but not met, the resulting reduced bag limits are not needed to protect walleye populations. Walleye bag limits lower than 3 per day result in reduced fishing opportunities and have led to tensions between anglers and the Chippewa tribes. The reduced daily bag limits also result in hardships on businesses dependent upon tourism and sportfishing in the ceded territory. The foregoing rule will allow the Department of Natural Resources to increase the walleye daily bag limits for anglers on waters where the Chippewa harvest goals are not met.

Publication Date: May 30, 1998

Effective Date: May 30, 1998

Expiration Date: October 27, 1998

Hearing Date: July 16, 1998

3. Rules adopted revising chs. NR 10 and 11, relating to deer hunting in Deer Management Unit 67A.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Deer are causing significant crop damage concerns in this

Unit. It is highly unlikely that the regular 1998 gun deer seasons will achieve the prescribed harvest of antlerless deer.

Publication Date: June 24, 1998

Effective Date: October 1, 1998

Expiration Date: February 28, 1999

4. Rules were adopted revising ch. NR 19, relating to wildlife damage abatement and claims program.

Exemption From Finding of Emergency

Pursuant to s. 9137(11s)(b), 1997 Wis. Act 27 the department is not required to make a finding of emergency for this rule promulgated under s. 227.24, Stats.

Publication Date: July 1, 1998

Effective Date: July 1, 1998

Expiration Date: November 28, 1998

5. Rules adopted revising s. NR 20.03 (1)(k), relating to sport fishing for yellow perch in Sauk Creek, Ozaukee County.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

The yellow perch population in Lake Michigan is in a state of decline. Harvests of yellow perch must be limited immediately in order to maximize the probability of good reproduction in the future. Lake Michigan yellow perch are attracted by the electric power plant thermal discharge into Sauk creek, an Ozaukee county tributary of Lake Michigan. The sport fishing harvest limits proposed here remove an opportunity for high sport harvests of yellow perch at one location where current regulations do not afford adequate protection for yellow perch. Accordingly, it is necessary to restrict the harvest of yellow perch from Sauk creek by establishing an open season and daily bag limit that coincide with Lake Michigan's.

Publication Date: June 27, 1998

Effective Date: June 27, 1998

Expiration Date: November 24, 1998

Hearing Date: July 24, 1998

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Environmental Protection--Water Regulation, Chs. NR 300--)

Rules adopted revising ch. NR 300, relating to fees for waterway and wetland permit decisions.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

Land development and public infrastructure projects that affect water resources are being delayed as a result of extreme workload and high staff vacancy rate in southeastern Wisconsin and elsewhere. Fee revenue must be generated immediately in order to support positions authorized in the recent budget to address the delays.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on March 25, 1998.

The rules contained herein shall take effect on April 1, 1998, following publication in the official state newspaper pursuant to authority granted by s. 227.24(1)(c), Stats.

Publication Date: April 1, 1998
Effective Date: April 1, 1998
Expiration Date: August 29, 1998
Hearing Dates: May 27 and 28, 1998
Extension Through: October 27, 1998

EMERGENCY RULES NOW IN EFFECT

Public Instruction

Rules adopted revising **ch. PI 35**, relating to the Milwaukee parental school choice program.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

On June 10, 1998, the Wisconsin Supreme Court found constitutional the revisions made to the Milwaukee parental choice program under 1995 Wis. Act 27.

Since the provisions under the Act (including allowing the participation of religious schools) are to be implemented during the 1998–99 school year, rules must be in place as soon as possible in order to establish uniform financial accounting standards and financial audit requirements required of the participating private schools as provided for under the Act. The requirements established under this rule were discussed with the private schools participating under the program during the 1996–97 school year. The schools indicated an acceptance of these provisions.

These emergency rules will be promulgated as proposed permanent rules.

Publication Date: August 5, 1998
Effective Date: August 5, 1998
Expiration Date: January 1, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Public Service Commission

1. Rules adopted amending **ss. PSC 160.05, 160.11 (6) and 160.17**, relating to the provision of universal telecommunications service and administration of the universal service fund and creating **ch. PSC 161**, establishing the Education Telecommunication Access Program.

ANALYSIS PREPARED BY THE PUBLIC SERVICE COMMISSION OF WISCONSIN

The Technology for Educational Achievement in Wisconsin (TEACH) initiative culminated in comprehensive legislation in 1997 Wis. Act 27 (Act 27). Newly enacted s. 196.2 18(4r)(b), Stats., mandates that the Public Service Commission (Commission), in consultation with the Department of Administration (Department)

and Technology for Educational Achievement (TEACH) in Wisconsin Board (Board), promulgate rules—under the usual ch. 227, Stats., rulemaking procedures—establishing the Educational Telecommunications Access Program. Section 9141 of Act 27 mandates that the Commission promulgate emergency rules establishing the Educational Telecommunications Access Program, to provide school districts, private schools, technical college districts, private colleges and public library boards with access to data lines and video links, for the period before the effective date of permanent rules promulgated under s. 196.218(4r)(b), Stats., but not to exceed the period authorized under s. 227.24(1)(c) and (2), Stats.

These emergency rules establish the Educational Telecommunications Access Program to provide access to data lines and video links for eligible school districts, private schools, technical college districts, private colleges and public library boards at low monthly prices. These rules implement the TEACH legislation by:

♦ Defining the entities which may be eligible under this program, i.e., “private college,” “private school,” “public library board,” “school district” and “technical college district.”

♦ Defining a “data line” as a data circuit which provides direct access to the internet.

♦ Defining a “video link” as a 2–way interactive video circuit and associated services.

♦ Establishing technical specifications for a data line, including that such a line shall terminate at an internet service provider, unless the Board determines that an alternative is acceptable.

♦ Establishing technical specifications for a video link which exclude television monitors, video cameras, audio equipment, any other classroom equipment or personnel costs associated with scheduling.

♦ Including privacy protections as required by s. 196.218 (4r)(c)5., Stats.

♦ Providing an application procedure which (1) allows a school district that operates more than one high school to apply for access to a data line and video link or access to more than one data line or video link, but not to more than the number of high schools in that district, (2) prohibits a school district from applying if it has received an annual grant from the Board in the current state fiscal year under an existing contract with the Department, (3) prohibits a technical college district from applying before April 1, 1998, and (4) prohibits a school district, private school, technical college district, private college or public library board from applying if it is receiving partial support funding through rate discounts under s. PSC 160.11.

♦ Requiring that the Board determine eligibility by applying criteria, including availability of funds and impact of the requested access on available funds, reasonableness of the requested access, readiness of the applicant to utilize the requested access and proposed uses of the requested access.

♦ Requiring the Board to determine by April 1, 1998, whether there are sufficient monies in the appropriation to include technical college districts in the program on or after that date.

♦ Establishing criteria for the Board to consider in prioritizing applications if monies in the universal service fund are insufficient to approve all pending applications.

♦ Providing for “alternative access,” defined as a service architecture or technology not available through the Department at the time of the application.

♦ Requiring monthly payments from the applicant to the Department for each data line or video link, not to exceed \$250 per month, except that the payment may not exceed \$100 per month for each line or link which relies upon a transport medium operating at a speed of 1.544 megabits per second.

♦ Providing that assessments for this program shall be made by the Commission under ch. PSC 160.

Exemption From Finding of Emergency

In Section 9141 of 1997 Wis. Act 27, the legislature specifically exempted the Commission from the finding of emergency required by ss. 227.24, Stats.

Publication Date: February 27, 1998
Effective Date: February 27, 1998
Expiration Date: July 26, 1998
Hearing Date: May 5, 1998
Extension Through: September 23, 1998

- Rules were adopted amending s. PSC 4.30 (4) (a) and (5) (a) and (b), relating to the preparation of draft environmental impact statements for electric generating plant projects that must be reviewed in 90 days.

Finding of Emergency

The Commission's review of CPCN applications from the winning bidders under 1997 Wis. Act 204, Section 96 (1), will commence when completed applications are filed. This is likely to occur on or before August 31, 1998, at which point state law grants the Commission only 90 days to finish its review of the project applications. Permanent rules cannot be adopted in time to affect the Commission's review period. Preservation of the public peace, health, safety or welfare necessitate putting this rule into effect immediately, so that the Commission can complete its review process in a timely manner.

Publication Date: July 17, 1998
Effective Date: July 17, 1998
Expiration Date: December 14, 1998

EMERGENCY RULES NOW IN EFFECT

Technical College System Board

Rules adopted creating **ch. TCS 15**, relating to Faculty Development Grants.

Finding of Emergency

The Wisconsin Technical College System Board finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

1997 Wis. Act 27 (the 1997-99 biennial budget bill) took effect on October 14, 1997, which was three and a half months into fiscal year 1997-98. That act created ss. 20.292(1)(eg) and 38.33, Stats. An annual appropriation of \$832,000 in each of the state fiscal years of the 1997-99 biennium was established. These funds are to be awarded by the technical college system board as grants to technical college district boards to establish faculty development programs.

The Act requires the technical college system board to promulgate rules establishing specific criteria for awarding these grants. The technical college system board has just begun the permanent rule making process for establishing administrative rules for the faculty development grants program. However, there is insufficient time to have the permanent rules in place before the local technical college districts must submit their proposals for faculty development grants under s. 38.33, Stats. It is imperative that the program be implemented and the funds be distributed before the end of the fiscal year or else the appropriated funds will lapse to the general fund. The loss of funds, including local matching funds, will

have a detrimental effect on the ability of district boards to establish faculty development programs.

Publication Date: April 1, 1998
Effective Date: April 1, 1998
Expiration Date: August 29, 1998
Hearing Date: June 30, 1998

EMERGENCY RULES NOW IN EFFECT

Workforce Development

(Economic Support, Chs. DWD 11 to 59)

Rules were adopted revising s. DWD 12.25, relating to amendments to the learnfare program.

Exemption From Finding of Emergency

The Department of Workforce Development promulgates a rule under the "emergency rule" procedure of s. 227.24, Stats., as authorized by section 9126 (5qh) of 1997 Wis. Act 27, which provides:

"Using the procedure under section 227.24 of the statutes, the department of workforce development may promulgate rules required under section 49.26 of the statutes, as affected by this act, for the period before the effective date of the permanent rules promulgated under section 49.26 of the statutes, as affected by this act, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (2) (b) of the statutes, the department of workforce development need not provide evidence of the necessity of preservation of the public peace, health, safety or welfare in promulgating rules under this subsection."

Analysis

Statutory authority for rule: s. 49.26 (1) (gm) 2 and (h) 1

Statute interpreted by the rule: s. 49.26

This rule implements changes to the learnfare program made by 1997 Wis. Act 27 by amending the existing rules on the learnfare program, s. DWD 12.25, Wis. Adm. Code, as follows:

Application of the school attendance requirement is changed from children aged 6 to 19 to children aged 6 to 17.

A child will not meet the learnfare attendance requirement if the child is not enrolled in school or was not enrolled in the immediately preceding semester.

Participation in case management is required for a child who does not meet the attendance requirements or who is a minor parent, a dropout, a returning dropout, or a habitual truant. If a child fails to meet the attendance requirements, or if the child and the child's parent fail to attend or reschedule a case management appointment or activity after two written advance notices have been given by the W-2 agency, the W-2 agency is required to impose a financial penalty unless an exemption reason or a good cause reason is verified.

The exemption reasons are the same criteria that have in the past been treated as good cause under learnfare. In addition, good cause for failing to participate in learnfare case management includes any of the following:

- Child care is needed and not available.
- Transportation to and from child care is needed and not available on either a public or private basis.
- There is a court-ordered appearance or temporary incarceration.
- Observance of a religious holiday.
- Death of a relative.
- Family emergency.

- Illness, injury or incapacity of the child or a family member living with the child.
- Medical or dental appointment for the minor parent or the minor parent's child.
- Breakdown in transportation.
- A review or fair hearing decision identifies good cause circumstances.
- Other circumstances beyond the control of the child or the child's parent, as determined by the W-2 agency.

The financial penalty will be imposed as a reduction of the benefit amount paid to a W-2 participant who is in a community service job

(CSJ) or transitional placement and will be imposed as a liability against a W-2 participant who is in a trial job. The amount of the penalty will be \$50 per month per child, not to exceed \$150 per W-2 group per month. The financial penalty will be imposed each month until the child meets the school attendance or case management requirements or until exemption or good cause reason is verified.

Publication Date: January 2, 1998
Effective Date: January 2, 1998
Expiration Date: June 1, 1998
Hearing Date: March 16, 1998
Extension Through: September 28, 1998

STATEMENTS OF SCOPE OF PROPOSED RULES

Natural Resources

Subject:

NR Code – Relating to developing rules for water ski jumps and ski platforms.

Description of policy issues:

Description of policy issues to be resolved, including groups likely to be impacted or interested in the issue:

Water skiing, including recreational and exhibition skiing, is clearly an incident of navigation, and can provide public benefit. Navigational structures, including ski jumps and platforms, and associated uses have impacts on fish and wildlife habitat, can resuspend sediments (causing water quality impacts), affect natural scenic beauty, and can affect other navigation, or other riparians. Statutes and common law indicate intent to balance these rights. Water ski clubs, riparian property owners, and the general public who hold recreational interests in waterway use will be interested/affected by this rule.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

New legislation (1997 Wis. Act 27, Section 1139zm) requires that the Department prepare rules for water ski platforms and jumps:

1997 AB 100 (ACT 27) **30.135 Regulation of water ski platforms and jumps.** (1) WHEN PERMIT REQUIRED. (a) A riparian proprietor may place a water ski platform or water ski jump in a navigable waterway without obtaining a permit if all of the following requirements are met:

1. The platform or jump does not interfere with public rights in navigable waters.
2. The platform or jump does not interfere with rights of other riparian proprietors.
3. The platform or jump is located at a site that ensures adequate water depth and clearance for safe water skiing.

(b) If the department determines that any of the requirements under par. (a) are not met, the riparian owner shall submit a permit application to the department[. . .]

30.135 (3) RULES. (a) The department shall promulgate a rule listing specific reasons that will support a substantive written objection to the placement of a water ski platform or water ski jump.

(b) The department shall promulgate rules specifying the information that shall be disclosed in a notice under sub. (2) (a). The disclosed information shall include all of the following:

1. A statement explaining what constitutes a substantive written objection and the list of specific reasons that support a substantive written objection and the list of specific reasons that support a substantive written objection that is promulgated under par. (a).
2. The fact that the department may decide to proceed on the application without a hearing.
3. The fact that a decision to proceed on an application without a hearing under subd. 2 is subject to review under ch. 227. . . .

Statutory authority for the rule:

Section 30.135, Stats.

Anticipated time commitment:

The anticipated time commitment is 54 hours. Two or three public hearings will be held in October, 1998 at Madison, Green Bay, Spooner or Eau Claire.

Natural Resources

(Fish, Game, etc., Chs. NR 1--)

Subject:

NR Code – Relating to developing sustainable forestry practices legislation.

Description of policy issues:

Description of policy issues to be resolved, including groups likely to be impacted or interested in the issue:

The 97/99 Budget Adjustment Act requires the Department to develop proposed legislation to encourage the practice of sustainable forestry by June 1, 1999. This legislation will impact the forest industry, forest landowners and county and local governments.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

This proposal is directed by the legislature as a result of concerns over potential restrictions on the practice of forestry by local zoning ordinances.

Statutory authority for the rule:

Section 9136 (3d), 1997 Wis. Act 237

Anticipated time commitment:

The anticipated time commitment is 90 hours.

Natural Resources

(Environmental Protection-- General, Chs. NR 100--)

Subject:

Ch. NR 140 – Relating to groundwater quality standards for ammonia.

Description of policy issues:

Description of policy issues to be resolved, including groups likely to be impacted or interested in the issue:

On April 29, 1998, the Natural Resources Board adopted a health standard for ammonia. On June 17th, the Assembly Natural Resources Committee held an executive session and adopted one motion with regard to ammonia. This motion recommends that the Department resubmit a new rule to the legislature containing a standard for ammonia after additional opportunity for public comment. Groups which have been and are likely to remain interested in this issue include Midwest Food Processors Association, Dean Foods, Wisconsin Federation of Cooperatives, Wisconsin Manufacturers and Commerce, and environmental groups.

This action does not represent a change from past policy.

Statutory authority for the rule:

Sections 160.07, 160.11, 160.13, 160.15 and 281.12 (1), 281.15 (1) and (2) and 281.19 (1), Stats.

Anticipated time commitment:

The anticipated time commitment is 466 hours. Four public hearings are proposed to be held in February, 1999 at Madison, Eau Claire, Green Bay and Waukesha.

Natural Resources

(Environmental Protection-- Air Pollution Control, Chs. NR 400--)

Subject:

Ch. NR 409 – Relating to the updating of requirements for acid rain provisions in operation permits.

Description of policy issues:

Description of policy issues to be resolved, including groups likely to be impacted or interested in the issue:

The Bureau of Air Management is seeking approval to incorporate the nitrogen oxide provisions and revisions to the sulfur dioxide provisions of the Code of Federal Regulation into the Wisconsin Administrative Code.

The Clean Air Act Amendments of 1990 require mostly coal-burning electric utility sources to control their emissions of sulfur dioxide and nitrogen oxides, which are precursors to acid rain. The current sulfur dioxide provisions are in ch. NR 409, Wis. Adm. Code. The Federal Nitrogen Oxides (NOx) Reduction Program rules, finalized December 1996, establish NOx emission limitations for certain coal-fired utility units and revise limitations for others. The Department proposes to meet, but not exceed, the federal requirements. To the best of our knowledge, these changes will create no significant controversy regarding the rule.

No policy issues need to be resolved. Thermal electric power plants are directly impacted by these rules.

This action does not represent a change from past policy.

Explain the facts that necessitate the proposed change:

Update to rules because of revision to the Federal acid rain rules in 40 CFR Part 72 and Part 76.

Statutory authority for the rule:

40 CFR 72 and s. 285.11, Stats.

Anticipated time commitment:

The anticipated time commitment is 644 hours. One public hearing is proposed to be held in March, 1999 at the city of Madison.

Transportation**Subject:**

Ch. Trans 510 – Relating to the Transportation Facilities Economic Assistance and Development (TEA) Program.

Description of policy issues:

Description of the objective of the rule:

This rulemaking will amend ch. Trans 510, relating to the Transportation Facilities Economic Assistance and Development (TEA) Program. The objective is to delete the language in s. Trans 510.05, relating to the TEA grant not “less than 25%” rule, in order to not exclude economic development projects based upon the size of an overall transportation improvement project. TEA projects were unintentionally and often unfairly excluded when projects generated a small number of jobs given the size of the overall transportation improvement. Elimination of smaller job creation projects puts an unnecessary burden on communities with limited financial resources and on those communities that wanted to use TEA funds to leverage other financial resources to help pay for needed infrastructure improvements.

Description of existing policies relevant to the rule:

The deletion of the 25% rule would not alter the purpose and intent of the TEA program, which is to create good paying jobs for Wisconsin residents. Another provision in the administrative rule, s. Trans 510.04 (1) (b), serves the same intent as the 25% rule: that is, to ensure that the economic development project would not have occurred without TEA grant assistance. The Department could continue to administer the 25% rule, but the continuation of the rule would likely exclude smaller (rural) communities with limited financial resources from the TEA program.

Statutory authority for the rule:

Section 84.185, Stats.

Estimate of the amount of time to develop the rule:

10 working days

Workforce Development**Subject:**

Chs. ILHR 805, 811, 816, 820, and 830 – Relating to:

Renumbering and minor revisions to ch. ILHR 805 – Allowable Costs under the Job Training Partnership Act; ch. ILHR 811 – Performance-Based Contracting; ch. ILHR 816 – Dislocated Worker Program; ch. ILHR 820 – Employment and Training Assistance for Dislocated Workers; and the repeal of ch. ILHR 830 – Wisconsin Job Opportunity Business Subsidy Program.

Description of policy issues:

Description of the objective of the rule:

It is necessary to repeal ch. ILHR 830 and to renumber the other rules listed above to chs. DWD 330 – 333 respectively. In addition, the rules will be reviewed for appropriate corrections and updating.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Chs. ILHR 805, 811, 816 and 820 contain the Department’s policies and procedures for the administration of programs under the federal Job Training and Partnership Act, including programs for the employment and training of dislocated workers. No changes are planned for these rules beyond renumbering, corrections and updating. Ch. ILHR 830 must be repealed because its authorizing statute (former s. 101.35, Stats.) expired under a sunset provision.

Statutory authority for the rule:

Sections 103.005 and 106.15, Stats.

Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

This rule will require less than 10 hours of state employee time and nonsignificant additional resources.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

Please check the Bulletin of Proceedings for further information on a particular rule.

Administration

Rule Submittal Date

On August 10, 1998, the Wisconsin Department of Administration referred a proposed rule affecting ch. Adm 19 to the Wisconsin Legislative Council Rules Clearinghouse, relating to small cities community development block grants for housing.

Analysis

Statutory authority:

The Department of Administration authority to adopt this rule is found in ss. 16.004 (1), 16.358 (2) and 227.11 (2) (a), Stats.

Summary:

The proposed rule affects ch. Adm 19, Wis. Adm. Code, relating to small cities community development block grants for housing.

Section 16.358, Stats., created in 1991, authorized the Department of Administration to adopt and administer ch. Adm 19, to establish requirements for the award of community development block grant funds to local units of government.

The creation of s. Adm 19.08 is proposed in order to comply with the amendments to s. 16.358, Stats., created in 1997 Wis. Act 27. Section Adm 19.05 (6) is deleted in order to remove a subjective element from the evaluation criteria. The other changes are not substantive, but are made for the purposes of clarification of existing language.

Agency Procedure for Promulgation

A public hearing is required, and will be scheduled.

Contact People

If you have any substantive questions regarding this rule, you may contact:

Marti Wilson
Dept. of Administration
Telephone (608) 266-5842

If you have any questions regarding the internal processing of the rule, you may contact:

Donna Sorenson
Dept. of Administration
Telephone (608) 266-2887

Agriculture, Trade & Consumer Protection

Rule Submittal Date

On August 17, 1998, the Wisconsin Department of Agriculture, Trade and Consumer Protection referred a proposed rule affecting

ch. ATPC 127 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends ch. ATPC 127, Wis. Adm. Code, relating to home solicitation selling.

Agency Procedure for Promulgation

Public hearings are required, and will be held after the Wisconsin Legislative Council Rules Clearinghouse completes its review of the proposed rule. The Division of Trade and Consumer Protection is primarily responsible for promulgation of this rule.

Contact People

If you have questions regarding this rule, you may contact:

Jim Rabbitt
Division of Trade and Consumer Protection
Telephone (608) 224-4965

or

Attorney David Ghilardi
Telephone (608) 224-5030

Commerce

Rule Submittal Date

On August 10, 1998, the Wisconsin Department of Administration referred a proposed rule affecting ch. ILHR 57 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. ILHR 57, Wis. Adm. Code, subchapter II, relating to the exemption of accessibility requirements for certain multilevel, multifamily dwelling units.

Agency Procedure for Promulgation

A public hearing is required, and will be scheduled. The agency unit responsible for the promulgation of the proposed rule is the Department of Commerce.

Contact Person

If you have questions regarding this rule, you may contact:

Diane Meredith
Dept. of Commerce
Telephone (608) 266-8982

Health & Family Services

Rule Submittal Date

On August 7, 1998, the Wisconsin Department of Health & Family Services referred a proposed rule affecting ch. HFS 119 to the

Wisconsin Legislative Council Rules Clearinghouse, relating to the operation of the Health Insurance Risk-Sharing Plan (HIRSP).

Analysis*Statutory authority:*

Sections 149.11, 149.12 (3) (c), 149.143 (2) (a) 2., 3. and 4., (3) (a) and (4), 149.144, 149.146 (2) (b) (intro.), 149.15 (5) and 149.17 (4), Stats., as affected by 1997 Wis. Act 27.

Reason for rules, intended effects, requirements:

This order repeals and recreates the Department's rules for operation of the Health Insurance Risk-Sharing Plan (HIRSP) under ch. 149, Stats., as renumbered and as otherwise affected by the 1997 Wis. Act 27.

1997 Wis. Act 27 transferred responsibility for HIRSP from OCI (Office of the Commissioner of Insurance) to DHFS, effective January 1, 1998. The transfer included the administrative rules for operation of HIRSP, ch. Ins 18. The Department arranged for ch. Ins 18 to be renumbered ch. HFS 119, effective April 1, 1998.

1997 Wis. Act 27 made extensive changes in the HIRSP program statute. Through this order, these are either being incorporated into the rules, like the substitution of plan administrator [EDS] for administering carrier or, in the case of directives like the directive to set total insurer assessments by rule, are being established as parts of the rules.

The rulemaking order also updates tables to increase annual premiums and incorporates tables showing premiums for policies with a \$2,500 deductible.

Finally, the rulemaking order adds definitions (ch. Ins 18 simply referenced the program statute) and makes other form improvements to the rules, like adding some titles and getting rid of useless rule language, to make the chapter read better and look like other DHFS rule chapters.

Forms:

S. HFS 119.12 (4) – Supplemental Application for Premium and Deductible Reduction

Agency Procedure for Promulgation

Public hearing under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Contact People

Randy McElhose
Division of Health
Telephone (608) 267-7127

Kathy Rogers
Division of Health
Telephone (608) 264-7733

Public Instruction**Rule Submittal Date**

On August 12, 1998, the Wisconsin Department of Public Instruction referred a proposed rule affecting ch. PI 35 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. PI 35, Wis. Adm. Code, relating to the Milwaukee parental school choice program.

Agency Procedure for Promulgation

A public hearing is required, and public hearings will be scheduled. The Division of Finance and Management Services is primarily responsible for promulgation of this rule.

Contact Person

If you have questions regarding this rule, you may contact:

Charlie Toulmin
Milwaukee Parental School Choice Consultant
Telephone (608) 266-2853

Public Instruction**Rule Submittal Date**

On August 12, 1998, the Wisconsin Department of Public Instruction referred a proposed rule creating ch. PI 38 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule creates ch. PI 38, Wis. Adm. Code, relating to grants for peer review and mentoring.

Agency Procedure for Promulgation

A public hearing is required, and public hearings will be scheduled. The Division for Learning Support: Instructional Services is primarily responsible for promulgation of this rule.

Contact Person

If you have questions regarding this rule, you may contact:

Peter Burke, Director
Teacher Education, Licensing & Placement
Telephone (608) 266-1879

Transportation**Rule Submittal Date**

On August 12, 1998, the Wisconsin Department of Transportation referred a proposed rule affecting ch. Trans 197 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. Trans 197, Wis. Adm. Code, relating to charges for submission of proof of insurance.

Agency Procedure for Promulgation

A public hearing is required, and is scheduled for September 21, 1998. The organizational unit responsible for the promulgation of the proposed rule is the Division of Motor Vehicles/Bureau of Driver Services.

Contact Person

If you have questions regarding this rule, you may contact:

Julie A. Johnson, Paralegal
Dept. of Transportation
Telephone (608) 266-8810

NOTICE SECTION

Notice of Hearing *Agriculture, Trade & Consumer Protection*

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing, at the time and place indicated below, on an emergency rule amending ch. ATCP 81, Wis. Adm. Code, relating to grade standards for body and texture characteristics of colby and monterey (jack) cheese.

Written Comments

The public is invited to attend the hearing and make comments on the emergency rule. Following the public hearing, the hearing record will remain open until **September 25, 1998** for additional written comments.

Copies of Rule

A copy of this rule may be obtained, free of charge, from:

Division of Food Safety, Telephone (608) 224-4700
Wis. Dept. of Agriculture, Trade & Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

Copies will also be available at the public hearing.

Hearing Information

September 14, 1998
Monday
10:00 a.m. to
1:00 p.m.
Large Conference Room
Lower Level, Ruth Giffrey Bldg.
Portage Co. Health & Human Serv.
817 Whiting Avenue
Stevens Point, WI

(Access for handicapped people is available at the main entrance on the east side of the building.)

An interpreter for the hearing-impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by **September 8, 1998**, either by writing to Debbie Mazanec, Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911, (608-224-4712), or by contacting the message relay system (TTY) at 608-224-5058. Handicap access is available at the hearing location.

Analysis Prepared by the Dept. of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 97.09 (1) and 97.177 (1), (2) and (4)

Statutes interpreted: ss. 97.09 and 97.177

This emergency rule modifies current rules under ch. ATCP 81, Wis. Adm. Code, related to grade standards for body and texture characteristics of colby and monterey (jack) cheese.

The current standards require the presence of mechanical openings or an "open" body in order for the cheese to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

This emergency rule repeals current grade standards that require mechanical openings in colby and monterey (jack) cheese. Under this emergency rule, the cheese may have either mechanical openings or a closed body, depending on the method of manufacture.

When mechanical openings are present, their size and distribution are two of many factors which determine the specific grade category assigned to the cheese. Wisconsin certified premium grade AA requires that mechanical openings be "evenly distributed" and "small." Wisconsin grade A (Wisconsin state brand) requires that mechanical openings be "evenly distributed," without the added emphasis on "small." Wisconsin grade B has no requirement for mechanical openings to be "evenly distributed."

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate

Rules relating to cheese grading, packaging and labeling are contained in ch. ATCP 81, Wis. Adm. Code. Subchapter V specifies the Wisconsin grade standards for colby and monterey (jack) cheese. These standards include requirements for particular body and texture characteristics. The current standards require the presence of mechanical openings or an “open” body in order for the cheese to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

This emergency rule amends ch. ATCP 81, Wis. Adm. Code, to eliminate the requirement for mechanical openings from the grade standards for colby and monterey (jack) cheese. The emergency rule further clarifies that for all grade categories the cheese may exhibit either mechanical openings or a closed body, dependent upon the method of manufacture.

One-time costs of approximately \$1600 will be incurred by the Department for rule development.

Long –Range Fiscal Implications

None anticipated.

Notice of Hearing

Commerce

*(Building & Heating, etc.,
Chs. 50–64)*

Notice is hereby given that pursuant to ss. 101.02 (15) and 101.132, Stats., the Department of Commerce announces that it will hold public hearing on proposed rules relating to the exemption of accessibility requirements for certain multilevel multifamily dwelling units.

Hearing Information

September 14, 1998 **Room #3C, WHEDA Bldg.**
Monday **201 West Washington Ave.**
10:30 a.m. **Madison, Wisconsin**

Analysis

Statutory Authority: ss. 101.02 (1) and (15) and 101.132

Statutes Interpreted: ss. 101.02 (1) and (15) and 101.132

The Wisconsin Administrative Code, chapter ILHR 57, subchapter II, establishes design and construction requirements for accessibility in covered multifamily housing as specified in s. 101.132, Stats., formerly s. 106.04 (2r), Stats. The proposed changes in ch. ILHR 57, subchapter II, are in response to 1997 Wis. Act 237 that exempts the accessibility laws for multilevel multifamily housing with separate exterior entrances in buildings without elevators. This state law change does not conflict with the federal Fair Housing law since the federal law does not cover multilevel multifamily housing with separate exterior entrances in buildings without elevators. A multilevel dwelling unit means an individual dwelling unit with finished living space located on one floor level and a floor level immediately above or below it. The proposed rule eliminates only those sections requiring access to and accessible features within multilevel multifamily housing with separate exterior entrances in buildings without elevators.

If the rules are not revised an inconsistency between the statutes and the administrative rules would result. This inconsistency may cause confusion in application and enforcement within the construction industry and may result in construction delays, which may be costly.

Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **September 23, 1998**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

The hearing is held in a accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266–8982 or TY at (608) 264– 8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

A copy of the proposed rules may be obtained without cost from Margaret Slusser, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, Wisconsin (608) 261–6546 or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

Environmental Assessment

Notice is hereby given that the Department has prepared a preliminary environmental assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact.

Copies of the preliminary EA are available from the Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:

Diane Meredith
Division of Safety and Buildings
Department of Commerce
P.O. Box 2689
Madison, Wisconsin 53701
Telephone (608) 266-8982
or TTY (608) 264-8777

Written comments will be accepted until September 23, 1998

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules. Architectural, engineering and construction firms may use the proposed exemption of accessibility requirements when designing and constructing multilevel multifamily housing.
2. Reporting, bookkeeping and other procedures required for compliance with the rules. Plans and specifications for multilevel multifamily housing must be reviewed for compliance with the construction standards specified in chapter ILHR 66, but the accessibility requirements are not required.
3. Types of professional skills necessary for compliance with the rules. None known

Fiscal Estimate

The Department currently enforces requirements for accessibility in multifamily housing. This change will only exempt the plan review and inspection staff from enforcing the accessibility requirements in multilevel multifamily housing with separate exterior entrances in buildings without elevators. Since all other building design and construction requirements must be complied with and enforced by this Department, there will be no fiscal impact.

Notice of Hearing

Commerce

(Barrier-Free Design, Ch. Comm 69)

► (Reprinted from Mid-August, 1998 Wis. Adm. Register, to correct the location of hearing)

Notice is hereby given that pursuant to ss. 101.02 (15) and 101.13, Stats., the Department of Commerce announces that it will hold public hearings on proposed rules relating to exemption of elevator access in certain government-owned or -operated buildings

Hearing Information

August 31, 1998
Monday
10:00 a.m.
Room 371, GEF-I
201 East Washington Ave.
Madison, Wisconsin

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 261-6546 or TTY at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

Analysis of Proposed Rules

Statutory authority: ss. 101.02 and 101.13

Statute interpreted: s. 101.13

The proposed rule will exempt in government-owned or operated buildings elevator access to floor levels above or below the accessible ground floor providing these floor levels are less than 500 square feet, are not open to the general public and house no more than 5 people. Examples of these type of floor levels are drawbridge towers and boat traffic towers, lock and dam control stations, train dispatching towers and press box facilities. The reason for the proposed rule change is to make the emergency rule issued on May 15, 1998 a permanent rule. This rule benefits not only school districts, but other small state and local government buildings as well.

Environmental Assessment

Notice is hereby given that the Department has prepared a preliminary environmental assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:

Diane Meredith
Division of Safety & Buildings
Department of Commerce
P.O. Box 2689
Madison, WI 53701
Telephone (608) 266-8982
or TTY (608) 264-8777

Initial Regulatory Flexibility Analysis

1. *Types of small businesses that will be affected by the rules:*

All state and local governments constructing new buildings or remodeling existing buildings must comply with the proposed rules.

2. *Reporting, bookkeeping and other procedures required for compliance with the rules:*

Plans for buildings constructed new or undergoing remodeling must be reviewed for compliance with the proposed rules.

3. *Types of professional skills necessary for compliance with the rules:*

None known

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate

The Department currently enforces requirements for accessibility in government owned or operated buildings. The emergency rule modifies that elevator access is not required to floor levels above or below the accessible ground floor that are less than 500 square feet, are not open to the general public and houses no more than 5 people.

Written Comments

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **September 9, 1998**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

Copies of Rule and Contact Person

A copy of the proposed rules may be obtained without cost from:

Margaret Slusser, telephone (608) 261-6546
or (608) 264-8777 (TTY)
Program Development Bureau
Department of Commerce
P.O. Box 2689
Madison, WI 53701

Copies will also be available at the public hearing.

Notice of Hearing ***Hearing and Speech Examining Board***

Notice is hereby given that pursuant to authority vested in the Hearing and Speech Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting ss. 459.09, 459.095, 459.20, 459.24 (3) (em), (3) (m), (5), (5m), (6) (a), (b) and (c), 459.26 (2) (a), (b) and (c), 459.32 (3), 459.34 (2) (ce), (cm) and (cs), Stats., the Hearing and Speech Examining Board will hold a public hearing at the time and place indicated below to consider an order to revise chs. HAS 1 to 8, relating to continuing education, renewal, temporary practices, practical examinations, fitting of hearing instruments, use of titles, initials and designations and unlicensed practice.

Hearing Information

September 14, 1998 Room 179A
Monday 1400 East Washington Ave.
1:30 P.M. Madison, WI

Written Comments

Interested people are invited to present information at the hearing. People appearing may make an oral presentation, but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to:

Office of Administrative Rules
Dept. of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

Written comments must be received by **September 28, 1998** to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats., and ss. 459.095 (1) and (3) and 459.24 (5m) (a) 1. and 3., Stats., as amended by 1997 Wis. Act 49.

Statutes interpreted: ss. 459.09, 459.24, 459.26, 459.32 and 459.34

1997 Wis. Act 49 requires the Hearing and Speech Examining Board to promulgate rules establishing continuing education requirements; initial and renewal of credentials; temporary practices; requirements relating to the fitting of hearing instruments by audiologists; creation of practical examinations to test for proficiency in the fitting of hearing instruments; restrictions relating to the use of titles, initials and designations; unlicensed practice; and other minor and technical changes.

Text of Rule

SECTION 1. HAS 1.01 (1) is repealed.

SECTION 2. HAS 1.01 (2a) (intro.) and (a) are renumbered HAS 1.01 (2a) and amended to read:

HAS 1.01 (2a) "Direct supervision" means: ~~For purposes of supervising individuals other than audiology students, being physically present at the time the trainee makes ear impressions or measurements of human hearing for the purpose of fitting or selling a hearing instrument or fits or sells a hearing instrument.~~

SECTION 3. HAS 1.01 (2a) (b) is repealed.

SECTION 4. HAS 1.01 (5n) is amended to read:

HAS 1.01 (5n) "Sufficient cause" means ~~continued participation in a supervised course of study leading to a degree in audiology at a college or university, illness or other hardship.~~

SECTION 5. HAS 2.01 (4) (a) is renumbered HAS 2.01 (4) and amended to read:

HAS 2.01 (4) ~~Except as provided in par. (b), only~~ No more than one trainee at any given time may hold a trainee permit to practice the fitting of hearing instruments under the direct supervision of a given licensee.

SECTION 6. HAS 2.01 (4) (b) is repealed.

SECTION 7. HAS 3.02 (5) is amended to read:

HAS 3.02 (5) Chapters HAS 1 to § 8.

SECTION 8. HAS 6.02 (intro.), (2) and (3) are amended to read:

HAS 6.02 Definitions. ~~As used in this chapter and in ch. 459, Stats.:~~

(2) "Audiologist" has the meaning given in s. 459.40 (4) 459.20 (1), Stats.

(3) "Audiology" has the meaning given in s. 459.40 (2) 459.20 (2), Stats.

SECTION 9. HAS 6.02 (4s), (4t), (6a), (6b) and (8a) are created to read:

HAS 6.02 (4s) "Employee" means an individual employed directly by a speech-language pathologist or audiologist or an individual employed by an entity which employs or contracts with a speech-language pathologist or audiologist to provide services relating to the practice of speech-language pathology or audiology.

(4t) "Hearing instrument" means a hearing aid as defined in s. 459.20 (3g), Stats.

(6a) "Practice of fitting and dealing in hearing instruments" means the practice of fitting and dealing in hearing aids, as defined in s. 459.20 (3p), Stats.

(6b) “Sell” or “sale” has the meaning given in s. 459.20 (30), Stats.

(8a) “Sufficient cause” means illness or other hardship.

SECTION 10. HAS 6.04 (8) is created to read:

HAS 6.04 (8) Evidence satisfactory to the board that the applicant has passed the practical examination required under s. 459.26 (2) (b), Stats., or has completed education or training that the board determines is substantially equivalent to the completion of the examination.

SECTION 11. HAS 6.05 is renumbered HAS 6.05 (1) and amended to read:

HAS 6.05 Examinations. (1) An applicant for licensure as a speech–language pathologist shall pass the NESPA examination required by ASHA for certification or submit written verification of clinical competence received directly from ASHA. ~~An applicant for licensure as an audiologist shall pass the NESPA examination required by ASHA for certification or submit written verification of clinical competence from ASHA.~~

SECTION 12. HAS 6.05 (2) is created to read:

HAS 6.05 (2) An applicant for licensure as an audiologist shall pass the following examinations:

(a) The NESPA examination required by ASHA for certification or submit written verification of clinical competence from ASHA.

(b) The practical examination required under s. 459.26 (2) (b), Stats., or submit evidence of completion of education or training that the board determines is substantially equivalent to completing the examination.

SECTION 13. HAS 6.06 (1) (e) and (f) are created to read:

HAS 6.06 (1) (e) If applying for a temporary permit to practice speech–language pathology, evidence satisfactory to the board that the applicant has submitted an application to take the next available examination for licensure as a speech–language pathologist required under s. 459.26 (2) (a), Stats.

(f) If applying for a temporary permit to practice audiology, evidence satisfactory to the board that the applicant has submitted an application to take the next available examination for licensure as an audiologist required under s. 459.26 (2) (a) and (b), Stats.

SECTION 14. HAS 6.06 (3) is amended to read:

HAS 6.06 (3) A temporary license ~~may be issued~~ is valid for a period designated by the board, not to exceed 9 months ~~and~~. A temporary license granted by the board to practice speech–language pathology may be renewed once, at the discretion of the board. ~~A temporary license granted to practice audiology may be renewed once by the board if the applicant fails an examination for audiologist licensure under s. 459.26 (2) (a) or (b), Stats., and applies to take the next available examination or if the applicant shows, to the satisfaction of the board, sufficient cause for the renewal.~~

SECTION 15. HAS 6.07 (1) (d) is created to read:

HAS 6.07 (1) (d) Pass the practical examination required under s. 459.26 (2) (b), Stats., if applying for an audiologist license.

SECTION 16. HAS 6.08 (2) (b) is amended to read:

HAS 6.08 (2) (b) The ~~fee specified in~~ fees required under s. 440.05 (1) (b) and (2), Stats., as appropriate.

SECTION 17. HAS 6.09 (1a) is created to read:

HAS 6.09 (1a) The board may reprimand an audiologist, or deny, limit, suspend or revoke a license or permit, if it finds that the applicant, licensee or permittee has done any of the following:

(a) Violated any federal or state statute, rule or regulation that relates to the practice of fitting and dealing in hearing instruments.

(b) Failed to conduct a direct observation of the ear canal of a purchaser of a hearing instrument.

(c) Sold a hearing instrument to a person who was not given tests using appropriate procedures and instrumentation or without proper measurement of the functional intensity and range of the person’s hearing.

SECTION 18. HAS 6.09 (2) (h) and (i) are repealed.

SECTION 19. HAS 7.02 is amended to read:

HAS 7.02 Licenses. Hearing instrument specialist licenses granted under ss. 459.05 and 459.06, Stats., expire on February 1 of each ~~even-numbered~~ odd-numbered year. Except as provided in s. 459.24 (6), Stats., speech–language pathologist and audiologist licenses granted under ss. 459.24 and 459.28, Stats, expire on February 1 of each odd–numbered year.

SECTION 20. HAS 7.03 (1) (d) is created to read:

HAS 7.03 (1) (d) Certification that the applicant has completed, within the 2 years immediately preceding the date of his or her application, 20 hours of continuing education programs or courses of study approved by the board.

SECTION 21. HAS 7.03 (2) (c) is created to read:

HAS 7.03 (2) (c) Certification that the applicant has completed, within the 2 years immediately preceding the date of his or her application, 20 hours of continuing education programs or courses of study approved by the board.

SECTION 22. HAS 7.05 (1) (a) 4. is created to read:

HAS 7.05 (1) (a) 4. Certification that the applicant has completed, within the 2 years preceding the date of his or her application, 20 hours of continuing education programs or courses of study approved or required by the board.

SECTION 23. HAS 7.05 (2) (a) 3. is created to read:

HAS 7.05 (2) (a) 3. Certification that the applicant has completed, within the 2 years immediately preceding the date of his or her application, 20 hours of continuing education programs or courses of study approved or required by the board.

SECTION 24. Chapter HAS 8 is created to read:

Chapter HAS 8

CONTINUING EDUCATION REQUIREMENTS

HAS 8.01 Authority and purpose. The rules in this chapter are adopted by the hearing and speech examining board under the authority of ss. 227.11 (2), 459.095, 459.12 (1) and 459.24 (5m), Stats.

HAS 8.02 Definitions. In this chapter:

- (1) “Course of study” means coursework completed at a college or university accredited by a regional or national accrediting agency recognized by the U.S. department of education.
- (2) “Hour” means 60 minutes.
- (3) “Licensee” means a hearing instrument specialist, audiologist or speech–language pathologist licensed by the board under ch. 459, Stats.
- (4) “Program” means a seminar or course other than a course of study offered by a sponsor approved by the board.

HAS 8.03 Continuing education. (1) Every licensee shall complete at least 20 hours of board approved continuing education programs or courses of study which pertain to the practice of fitting and dealing in hearing instruments, audiology or speech–language pathology, as appropriate, in each biennial renewal period.

Note: A list of approved continuing education programs and courses of study may be obtained from the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

- (2) Except as provided under s. HAS 7.05 (1) (a) 4. and (2) (a) 3., continuing education hours may be applied only to the biennial registration period in which the continuing education hours are required.
- (3) To obtain credit for completion of continuing education hours, a licensee shall, at the time of each renewal, sign a statement certifying that he or she has completed, within the 2 years immediately preceding the date of his or her application, 20 hours of continuing education programs or courses of study approved by the board.
- (4) A licensee who fails to meet the continuing education requirements by the renewal date shall not practice as a hearing instrument specialist, audiologist or speech–language pathologist, as appropriate, until his or her license is restored under s. HAS 7.05.

(5) For auditing purposes, every licensee shall maintain records of continuing education hours for at least 5 years from the date the certification statement required under sub. (3) is signed.

HAS 8.04 Approval of continuing education programs and courses of study. (1) Except as provided in sub. (6), to apply for approval of a continuing education or course of study, a sponsor shall submit to the board office, at least 45 days prior to the first date the program or course of study is offered, an application on forms provided by the board and shall include the name of the sponsor, the program or course title, general description and an outline of the program or course, the dates, the location, the name and qualifications of each instructor.

Note: Application forms for approval of continuing education programs and courses of study may be obtained from the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

- (2) The following criteria will be considered in the approval process:
 - (a) The subject matter of the program or course shall pertain to an area of topic approved or required by the board which relates to the practice of fitting and dealing in hearing instruments, audiology or speech–language pathology.
 - (b) The program or course sponsor shall be approved by the board.
 - (c) The program or course sponsor agrees to monitor the attendance, furnish a certificate of attendance to each participant and maintain records verifying attendance for at least 5 years.
 - (3) If a continuing education course includes subject matter other than the subject matter areas identified under sub. (2) (a), only the board approved portions of the course which relate to the areas identified under sub. (2) (a), qualify as continuing education required under this chapter.
 - (4) Continuing education programs or courses of study offered by alternative delivery methods such as home–study courses, self–study packages, computer courses, televideo conferencing and other methods may be approved by the board.
 - (5) A program or course sponsor may repeat a previously approved program or course without application, provided that the subject matter and instructor has not changed.
 - (6) Subject to compliance with the requirements set forth in subs. (2) to (5), the board will accept attendance at and completion of continuing education programs or courses of study approved by the American academy of audiology, American speech–language–hearing association, Wisconsin department of public instruction, international hearing society or the national board for certification in hearing instrument sciences as fulfilling one or more continuing education hours required under this chapter.
- Note:** The following entities may be contacted by writing to the: American Academy of Audiology (AAA), 8201 Greensboro Drive, Suite 300, McLean, Virginia, 22102; American Speech–Language–Hearing Association (ASHA), 10801 Rockville Pike, Rockville, Maryland 20852; Wisconsin Department of Public Instruction (DPI), 125 South Webster, Madison, Wisconsin 53702; and the International Hearing Society (IHS) and National Board for Certification in Hearing Instrument Sciences (NBC–HIS), 16880 Middlebelt Road, Suite 4, Livonia, Michigan 48154–3367.
- HAS 8.05 Examination.** (1) If licensees are required to complete a specified continuing education program or course of study pursuant to s. 459.095 (3) or 459.24 (5m) (b), Stats., the board shall administer an examination on the matter that is the subject of the continuing education program or course of study prior to the date the continuing education program or course of study is offered.
- (2) A licensee who passes the examination administered by the board, as provided under sub. (1), will not be required to complete the continuing education hours approved by the board for the specified continuing education program or course of study.

- (3) A licensee who takes the examination specified under sub. (1), shall pay the fee required under s. 440.05 (1) (b), Stats.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the Department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to:

Pamela Haack, (608) 266-0495
Office of Administrative Rules
Department of Regulation & Licensing
1400 East Washington Ave., Room 171
P.O. Box 8935
Madison, WI 53708

Notice of Hearing
Regulation & Licensing

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Stats., and s. 440.205, Stats., as created by 1997 Wis. Act 139, and interpreting s. 440.205, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to create ch. RL 8 and Appendix I of ch. RL 8, relating to the issuance and use of administrative warnings.

Hearing Information

September 15, 1998 Room 133
Tuesday 1400 East Washington Ave.
8:45 A.M. Madison, WI

Written Comments

Interested people are invited to present information at the hearing. People appearing may make an oral presentation, but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to:

Office of Administrative Rules
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

Written comments must be received by **September 28, 1998** to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: s. 227.11 (2), Stats., and s. 440.205, Stats., as created by 1997 Wis. Act 139.

Statute interpreted: s. 440.205, Stats.

Section 440.205, Stats., as created by 1997 Wis. Act 139, authorizes the issuance and use of administrative warnings by Department of Regulation and Licensing credentialing authorities. The objective of the rule is to comply with the Act by establishing uniform procedures for the issuance and use of administrative warnings; to describe what is a first occurrence of a minor violation; to determine what is evidence of misconduct; and for personal appearances by credential holders before a credentialing authority.

Administrative rules are necessary in order to assure that administrative warnings are utilized in a manner that foster the desired result of protecting the public, and to reduce the possibility for inappropriate use. Under the statutes, administrative warnings may be issued only after a credentialing authority determines that an investigation has yielded “evidence of misconduct,” involving a “first occurrence of a minor violation.” Rules must be developed defining these requirements.

Also, the procedures by which an administrative warning may be issued must be established, as well as the format under which they will be prepared and issued. Finally, procedures for the right of a credential holder to “obtain a review” through personal appearance before a credentialing authority must be established.

Text of Rule

SECTION 1. Chapter RL 8 is created to read:

Chapter RL 8

ADMINISTRATIVE WARNINGS

RL 8.01 Authority and scope. Rules in this chapter are adopted under the authority of s. 440.205, Stats., to establish uniform procedures for the issuance and use of administrative warnings.

RL 8.02 Definitions. As used in s. 440.205, Stats., and in this chapter:

- (1) “Credential” means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.
- (2) “Department” means the department of regulation and licensing.
- (3) “Disciplinary authority” means the department or an attached examining board, affiliated credentialing board or board having authority to reprimand a credential holder.
- (4) “Division” means the division of enforcement in the department.
- (5) “First occurrence” means:
 - (a) The credential holder has never been charged as a respondent in a formal complaint filed under ch. RL 2.
 - (b) Other than the matter pending before the disciplinary authority, no informal complaint alleging the same or similar misconduct has been filed with the department against the credential holder.
 - (c) The credential holder has not been disciplined by a disciplinary authority in Wisconsin or another jurisdiction.
 - (6) “Minor violation” means:
 - (a) No significant harm was caused by misconduct of the credential holder.
 - (b) Continued practice by the credential holder presents no immediate danger to the public.
 - (c) If prosecuted, the likely result of prosecution would be a reprimand or a limitation requiring the credential holder to obtain additional education.
 - (d) The complaint does not warrant use of prosecutorial resources.
 - (e) The credential holder was not previously warned about the same or similar conduct.
 - (7) “Misconduct” means a violation of a statute or rule related to the profession or other conduct for which discipline could be imposed under chs. 440 to 480, Stats.

RL 8.03 Findings before issuance of an administrative warning. Before issuance of an administrative warning, a disciplinary authority shall make all of the following findings:

- (1) That there is specific evidence of misconduct by the credential holder.
- (2) That the misconduct is a first occurrence for the credential holder.
- (3) That the misconduct is a minor violation of a statute or rule.
- (4) That issuance of an administrative warning will adequately protect the public.

RL 8.04 Issuance of an administrative warning. (1) An administrative warning shall be substantially in the form shown in Appendix I.

- (2) An administrative warning may be issued to a credential holder by mailing the administrative warning to the last address provided by the credential holder to the department. Service by mail is complete on the date of mailing.

RL 8.05 Request for a review of an administrative warning. A credential holder who has been issued an administrative warning may request the disciplinary authority to review the issuance of the administrative warning by filing a written request with the disciplinary authority within 20 days after the mailing of the administrative warning. The request shall be in writing and set forth:

- (1) The credential holder’s name and address.
- (2) The reason for requesting a review.

RL 8.06 Procedures. The procedures for an administrative warning review are:

- (1) Within 45 calendar days of receipt of a request for review, the disciplinary authority shall notify the credential holder of the time and place of the review.

- (2) Unless the parties otherwise agree, no discovery is permitted. A credential holder may inspect records under s. 19.35, Stats., the public records law.
- (3) The disciplinary authority or its designee shall preside over the review. The review shall be recorded by audio tape unless otherwise specified by the disciplinary authority.
- (4) The disciplinary authority shall provide the credential holder with an opportunity to make a personal appearance before the disciplinary authority and present a statement. The disciplinary authority may request the division to appear and present a statement on issues raised by the credential holder. The disciplinary authority may establish a time limit for making a presentation. Unless otherwise determined by the disciplinary authority, the time for making a personal appearance shall be 20 minutes.
- (5) If the credential holder fails to appear for a review, or withdraws their request for a review, the disciplinary authority may note the failure to appear in the minutes and leave the administrative warning in effect without further action.
- RL 8.07 Transcription fees.** (1) The fee charged for a transcript of a review under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:
- (a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.
- (b) If a transcript is prepared by the department, the department shall charge a transcription fee of \$1.75 per page and a copying charge of \$.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of \$.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of \$.25 per page.
- (2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigence signed under oath.

SECTION 2. Appendix I of Chapter RL 8 is created to read:

APPENDIX I

State of Wisconsin

DEPARTMENT OF REGULATION AND LICENSING [DISCIPLINARY AUTHORITY] ADMINISTRATIVE WARNING

This administrative warning is issued by the {disciplinary authority} to {credential holder} pursuant to s. 440.205, Stats. The {disciplinary authority} makes the following findings:

- 1) That there is evidence of professional misconduct by {credential holder}, to wit:
- 2) That this misconduct is a first occurrence for {credential holder}.
- 3) That this misconduct is a minor violation of {statute or rule}.
- 4) That issuance of this administrative warning will adequately protect the public and no further action is warranted.

Therefore, the {disciplinary authority} issues this administrative warning and hereby puts the {credential holder} on notice that any subsequent similar violation may result in disciplinary action. The investigation of this matter is hereby closed.

Date: _____

Signature of authorized representative
For {Disciplinary Authority}

Right to Review

You may obtain a review of this administrative warning by filing a written request with the {disciplinary authority} within 20 days of mailing of this warning. The review will offer the credential holder an opportunity to make a personal appearance before the {disciplinary authority}.

*The record that this administrative warning was issued is a public record.
The content of this warning is private and confidential.*

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to:

Pamela Haack, (608) 266-0495
Office of Administrative Rules
Department of Regulation & Licensing
1400 East Washington Ave., Room 171
P.O. Box 8935
Madison, WI 53708

Notice of Hearing *Regulation & Licensing*

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Stats., and s. 440.972, Stats., as created by 1997 Wis. Act 156, and interpreting subch. X of ch. 440, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to create chs. RL 90 to 94, relating to the practice of massage therapy and bodywork.

Hearing Information

September 15, 1998 Room 291
Tuesday 1400 East Washington Ave.
10:15 A.M. Madison, WI

Written Comments

Interested people are invited to present information at the hearing. People appearing may make an oral presentation, but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to:

Office of Administrative Rules
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

Written comments must be received by **September 29, 1998** to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: s. 227.11 (2) (a), Stats., and s. 440.972, Stats., as created by 1997 Wis. Act 156.

Statutes interpreted: Subchapter X of ch. 440, Stats.

This proposed rule-making order of the Department of Regulation and Licensing fulfills the mandate of 1997 Wis. Act 156, which requires the Department to promulgate administrative rules:

- ☐ Establishing requirements and standards for the practice of massage therapy or bodywork by a registrant, including a code of ethics that governs a registrant's practice of massage therapy or bodywork.
- ☐ Establishing education, training or competency requirements that an applicant for a license must satisfy in order to be issued a license of registration. The rules shall require an applicant to complete at least 500 classroom hours of study in a course of instruction at a school of massage therapy or bodywork approved under s. 39.51, Stats., and the rules may require an applicant to pass an examination, administered or approved by the Department, to determine fitness to practice massage therapy or bodywork.
- ☐ Establishing continuing education requirements that a person must satisfy to be eligible to renew a license of registration.

Text of Rule

SECTION 1. Chapters RL 90 to 94 are created to read:

Chapter RL 90

AUTHORITY, INTENT AND DEFINITIONS

RL 90.01 Authority and intent. The rules in chs. RL 90 to 94 are adopted by the department pursuant to ss. 227.11 (2) and 440.972, Stats., to govern the registration of massage therapists and bodyworkers.

RL 90.02 Definitions. As used in chs. RL 90 to 94, unless the context otherwise requires:

- (1) “Classroom hour” means a period of instruction in an approved course consisting of not less than 50 minutes.
- (2) “Course of instruction” means a period of instruction in an approved course consisting of not less than 50 minutes.
- (3) “Department” means the department of regulation and licensing.
- (4) “Health care practitioner” means a health care provider as defined in s. 146.81 (1), Stats.
- (5) “Manual action” includes holding, positioning, rocking, kneading, compressing, decompressing, gliding or percussing the soft tissue of the human body and applying friction to soft tissue.
- (6) “Massage therapist or bodyworker” means a person who engages in massage therapy or bodywork.
- (7) “Massage therapy or bodywork” means the science and healing art that uses manual actions to palpate and manipulate the soft tissue of the human body and includes determining whether massage therapy or bodywork is appropriate or contraindicated, or whether referral to another health care practitioner is appropriate. Massage therapy or bodywork does not include making a medical diagnosis or instructing in or prescribing rehabilitative strengthening or conditioning exercises that are within the practice of physical therapy, as defined in s. 448.50 (4), Stats.
- (8) “Registrant” means a person who is issued a license of registration as a massage therapist or bodyworker by the department.

Chapter RL 91

APPLICATION

RL 91.01 Application for registration. Except as provided in s. RL 91.02, an individual applying for registration as a massage therapist or bodyworker shall submit:

- (1) An application on a form provided by the department.

Note: Application forms are available upon request to the department at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

- (2) The fee required under s. 440.05 (1), Stats.

- (3) Evidence satisfactory to the department that he or she has:

- (a) Completed at least 600 classroom hours of study in a course of instruction at a school of instruction approved by the educational approval board under ch. 39, Stats.

Note: A list of approved schools is available upon request to the Educational Approval Board at 310 Price Place, P.O. Box 7874, Madison, Wisconsin 53707–7874.

- (b) Subject to ss. 111.321, 111.322 and 111.335, Stats., does not have a conviction record.

- (c) In effect malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

RL 91.02 Special registration time limits. Instead of applying for registration under s. RL 91.01, an individual may elect to apply for registration under this section by satisfying either the requirements under sub. (1) or the requirements under sub. (2). A registration granted under sub. (1) will be valid for 3 years after the date that it is issued and may not be renewed. A registration granted under sub. (2) may be renewed.

- (1) An individual applying for registration between February 1, 1999 and August 31, 1999, shall submit the following:

- (a) An application on a form provided by the department that describes his or her education and experience in the practice of massage therapy or bodywork.

Note: Application forms are available upon request to the department at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

- (b) Evidence satisfactory to the department that he or she satisfies each of the following:

1. Has completed at least 100 classroom hours of instruction in the practice of massage therapy or bodywork or has practiced massage therapy or bodywork for compensation for at least 2 years during the 5 year period immediately preceding the date of application.

2. Has in effect malpractice liability insurance coverage in the amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

3. Pay the fee required under s. 440.05 (1), Stats.

- (2) An individual applying for registration between February 1, 1999 and February 29, 2000, shall submit the following:

- (a) An application on a form provided by the department that describes his or her education and experience in the practice of massage therapy or bodywork.

Note: Application forms are available upon request to the department at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(b) Evidence satisfactory to the department that he or she has passed an examination approved by the department.

(c) Pay the fee required under s. 440.05 (1), Stats.

RL 91.03 Reciprocal registration. (1) An applicant applying for registration on the basis of a license, registration or certification in another state or territory of the United States or another country shall:

(a) Submit an application on a form provided by the department.

Note: Application forms are available upon request to the department at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(b) Pay the fee required under s. 440.05 (2), Stats.

(c) Submit evidence satisfactory to the department that the applicant:

1. Holds a current license, registration or certificate to practice massage therapy or bodywork in another state or jurisdiction of the United States or another country.

2. Is not currently under investigation for a matter related to his or her practice of massage therapy or bodywork in the other state, territory or country.

3. Has never been disciplined for a matter related to his or her practice of massage therapy or bodywork in the other state, territory or country.

4. Subject to ss. 111.321, 111.322 and 111.335, Stats., the person does not have an arrest or conviction record.

5. Is not currently a party in pending litigation in which it is alleged that he or she is liable for damages for acts committed in the course of the practice of massage therapy or bodywork.

6. Has never been found liable for damages for acts committed in the course of the practice of massage therapy or bodywork.

7. Has in effect malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

(2) In determining whether to grant a reciprocal registration, the department shall consider whether the requirements for a license, registration or certificate in the other state or jurisdiction are similar to the requirements for registration as a massage therapist or bodyworker in this state.

RL 91.04 Accommodations relating to a disability. A qualified applicant with a disability shall be provided with reasonable accommodations requested in connection with the completion of an application for registration as a massage therapist or bodyworker.

Chapter RL 92

EDUCATION

RL 92.01 Course of instruction. (1) An applicant applying for registration as a massage therapist or bodyworker shall submit evidence satisfactory to the department that he or she has completed at least 600 classroom hours of study in a course of instruction at a school of massage therapy or bodywork approved by the educational approval board under ch. 39, Stats.

(2) Credit may be granted for a course of instruction regardless of when the instruction was completed.

(3) An approved course of instruction shall include the following subject areas:

(a) Anatomy, physiology, pathology and kinesiology: 122 classroom hours.

(b) Business, law and ethics: 50 classroom hours.

(c) Massage therapy or bodywork theory, technique and practice: 300 classroom hours which shall include 100 classroom hours of supervised hands-on practice.

(d) Student clinic: 20 classroom hours.

(e) Adult cardiopulmonary resuscitation (CPR) and standard first-aid: 8 classroom hours.

(f) Additional massage therapy or bodywork course offerings meeting the objectives of the course of instruction: 100 classroom hours.

RL 92.02 Approved schools. An approved course of instruction designed to meet the requirements in this chapter shall be provided by a school of massage therapy or bodywork approved by the educational approval board.

Note: A list of approved schools may be obtained from the Educational Approval Board at 310 Price Place, P.O. Box 7874, Madison, Wisconsin 53707-7874.

Chapter RL 93

REQUIREMENTS FOR RENEWAL

RL 93.01 Registration. Registration for massage therapists and bodyworkers expire on March 1 of each odd-numbered year.

RL 93.02 Renewal of registration. In order to renew a registration on or before the renewal date, the registrant shall submit the following:

(1) A renewal application on a form provided by the department.

(2) The renewal fee required under s. 440.08 (2) (a) 67q., Stats.

(3) Evidence satisfactory to the department that he or she has in effect malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

RL 93.03 Failure to renew. A registrant who fails to renew a registration by the applicable renewal date shall not use any title or description that implies that he or she is registered by the department as a massage therapist or bodyworker until his or her registration is renewed under s. RL 93.04.

RL 93.04 Late renewal. A massage therapist or bodyworker who fails to renew his or her registration by the renewal date may renew the registration by satisfying the following requirements:

(1) If applying less than 5 years after the renewal date, submitting to the department:

(a) An application for renewal on a form provided by the department.

(b) The applicable renewal fees required under s. 440.08 (2) (a) and (3), Stats.

(c) Evidence satisfactory to the department that he or she has in effect malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

(2) If applying 5 years or more after the renewal date, satisfying the requirements in sub. (1), and submitting proof of all of the following:

(a) Successful completion of educational coursework required by the department to ensure protection of the public health, safety and welfare.

(b) Successful completion of an examination required by the department to ensure protection of the public health, safety and welfare.

Chapter RL 94

GROUND FOR DISCIPLINE

RL 94.01 Violations of standards of practice. The following, without limitation because of enumeration, are violations of the standards of practice for massage therapists and bodyworkers:

(1) Misrepresenting qualifications, education, credentials and professional affiliations.

(2) Misrepresenting the scope of practice of a massage therapist or bodyworker to a client.

(3) Failing to inform a client about contraindications of massage therapy or bodywork.

(4) Failing to refer a client to a health care practitioner for necessary treatment beyond the qualifications or scope of practice of the massage therapist or bodyworker.

(5) Failing to inform a client, prior to charging or accepting fees, of any policy relating to cancellation of an appointment or failure of the client to appear for an appointment.

(6) Failing to obtain and record the written informed consent of the client or the client's authorized representative before initiating a plan of treatment.

(7) Violating the client's right to refuse, modify or terminate massage therapy or bodywork care.

(8) Failing to maintain, for a period of at least 5 years, records necessary for the continuity of the client's massage therapy or bodywork treatment.

(9) Failing to maintain the confidentiality of all client information, unless disclosure is required by law or court order.

(10) Failing to provide draping and treatment that ensure the safety and privacy of a client.

(11) Engaging in sexual conduct with a client, regardless of whether the client initiates the action.

(12) Failing to maintain clean clothing, linens, equipment, and premises according to standards recognized by the massage therapy or bodywork profession.

(13) Knowingly placing false information in a client's record.

(14) Failing to provide access to client records when requested by the department or its representative.

(15) Knowing providing false information to the department.

(16) After a request by the department, failing to cooperate in a timely manner with the department's investigation of complaints filed against the applicant or registrant. There is a rebuttable presumption that a registrant or applicant who takes longer than 30 days to respond to a request of the department has not acted in a timely manner under this section.

(17) Violating any rule adopted by the department relating to the practice of massage therapy or bodywork.

(18) Violating any term, provision or condition of any order issued by the department.

(19) Failing to practice massage therapy or bodywork within the scope of the registrant's competence, education, training and experience.

(20) Aiding or abetting an unregistered person, knowingly conspiring with an unregistered person, or allowing one's registration to be used by an unregistered person to evade the use of title restricted under ch. 440, Stats., relating to the practice of massage therapy or bodywork.

(21) Practicing in a manner which substantially departs from the standard of care ordinarily exercised by a massage therapist or bodyworker.

(22) Engaging in conduct likely to deceive, defraud, or harm an individual or the public in the course of the practice of massage therapy or bodywork.

- (23) Having a disciplinary action through final adjudication taken by another jurisdiction against one's license, certificate, permit or registration to practice massage therapy or bodywork.
- (24) Providing massage therapy or bodywork when benefits cannot reasonably be expected.
- (25) Knowingly permitting any professional staff to provide massage therapy or bodywork that exceed that person's competence, education, training and experience.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the Department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to:

Pamela Haack, (608) 266-0495
Office of Administrative Rules
Department of Regulation & Licensing
1400 East Washington Ave., Room 171
P.O. Box 8935
Madison, WI 53708

Notice of Proposed Rule Revenue

Notice is hereby given that pursuant to s. 227.11 (2) (a), Stats., and interpreting ss. 77.51 (8), (11) and (14) (h), 77.52 (1) and (2) (a) 11. and 77.54 (2), (2m), (6) (a) and (b) and (43), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **September 1, 1998**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Contact Person

Please contact Mark Wipperfurth at (608) 266-8253, if you have any questions regarding this proposed rule order.

Analysis by the Dept. of Revenue

Statutory authority: s. 227.11 (2) (a)

Statutes interpreted: ss. 77.51 (8), (11) and (14) (h), 77.52 (1) and (2) (a) 11. and 77.54 (2), (2m), (6) (a) and (b) and (43)

Sections 1. and 3. Tax 11.56 (1) (a) is repealed and recreated as Tax 11.56 (1) (b) 1 and Tax 11.56 (1) (b) 2. is created, to describe various traditional processes and machines and equipment used in manufacturing printed materials, and to reflect technological advances within the printing industry which are considered part of manufacturing printed materials.

Section 2. Tax 11.56 (1) (b) and (c) are renumbered Tax 11.56 (1) (c) and (a), and Tax 11.56 (1) (c) as renumbered is amended, to list the definitions in alphabetical order and to reflect proper grammar, per Legislative Council Rules Clearinghouse standards.

Section 4. Tax 11.56 (2) (a) is amended to reflect correct terminology.

Section 5. Tax 11.56 (3) (a), (b) 1. and 2. and (c) are renumbered Tax 11.56 (3) (a) (intro.), 1. and 2. and (b), and Tax 11.56 (3) (a) (intro.), 1. and 2. as renumbered are amended, to reflect correct terminology and grammatical standards.

Section 6. Tax 11.56 (5) and (6) (a) 2. are amended, to reflect correct statutory language and to remove the example within Tax (6) (a) 2. and set it forth separately as an example, per Legislative Council Rules Clearinghouse standards.

Sections 7. and 8. Tax 11.56 (6) (b) (intro.) is renumbered Tax 11.56 (6) (b) and amended and Tax 11.56 (6) (b) 1. and 2. are repealed, to remove the language relating to the examples and place the examples at the end of Tax 11.56 (6) (b), per Legislative Council Rules Clearinghouse standards.

Section 9. Tax 11.56 (6) (c) and (7) (b) are renumbered Tax 11.56 (7) (b) and (c) and amended to reflect the change in the taxability of raw materials which are processed, fabricated or manufactured into printed materials which will be used solely outside Wisconsin, due to the repeal of s. 77.51(18) (b) and creation of s. 77.54 (43), Stats., by 1997 Wis. Act 27.

Text of Rule

SECTION 1. Tax 11.56 (1) (a) is repealed.

SECTION 2. Tax 11.56 (1) (b) and (c) are renumbered Tax 11.56 (1) (c) and (a), and Tax 11.56 (1) (c) as renumbered is amended to read:

Tax 11.56 (1) (c) "Typesetting" includes converting images into standardized letter forms of a certain style which usually are hyphenated, justified and indented automatically by means of machinery and equipment. Typesetting machinery and equipment includes: fonts, video display terminals, tape and disc making equipment, computers and typesetters which are interconnected to operate essentially as one machine. A system shall be considered to operate essentially as one machine whether or not the tape or disc is automatically fed to the typesetter.

SECTION 3. Tax 11.56 (1) (b) is created to read:

Tax 11.56 (1) (b) "Manufacturing printed matter" includes either of the following processes by a manufacturer:

1. Initial typesetting and composition, producing a paste-up, combining photographs with words, making page makeups and taking pictures of them, making proofs and paper for editing, producing negatives which go to the stripping department for assembly of the flat and taking a picture, either positive or negative, of a flat which after it is finally proofed is known as plate-ready film, and producing an image carrier which is installed on a printing press, or using equivalent prepress technology to produce an image carrier, and the bindery/finishing stage.

2. Using computers, scanners, proofers, typesetters, photographic equipment, film processors and direct-to-plate equipment exclusively in performing any of the processes listed in subd. 1. "Manufacturing printed matter" does not include using the equipment described in this subdivision to design, write or compose an original document to be printed.

SECTION 4. Tax 11.56 (2) (a) is amended to read:

Tax 11.56 (2) (a) Charges for printing, lithography, photolithography, rotogravure, gravure, letter press, silk screen printing, imprinting, multilithing, mimeographing, photostating, steel die engraving, and similar operations for consumers customers, whether or not the paper and other materials are furnished by the consumers customers. A printer's charge for printing on paper furnished by a customer to produce printed matter not to be sold is subject to the tax.

SECTION 5. Tax 11.56 (3) (a), (b) 1. and 2. and (c) are renumbered Tax 11.56 (3) (a) (intro.), 1. and 2. and (b), and Tax 11.56 (3) (a) (intro.), 1. and 2., as renumbered, are amended to read:

Tax 11.56 (3) (a) Sales of tangible personal property by persons who are not printers, including so-called "trade shops" such as typesetters, image reproduction manufacturers, color separators and binders or finishers are taxable unless the sales qualify for a statutory exemption under s. 77.54 (2) or (2m), Stats., or other statutes, including the following:

1. Section 77.54 (2), Stats., which exempts the gross receipts from sales of "... tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale..."

2. Section 77.54 (2m), Stats., which exempts the gross receipts from sales of "tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred without charge to the recipient. ... The exemption. . . does not apply to advertising supplements that are not newspapers."

SECTION 6. Tax 11.56 (5) and (6) (a) 2. are amended to read:

Tax 11.56 (5) **EXEMPT PRINTING MACHINERY AND EQUIPMENT.** Section 77.54 (6) (a), Stats., provides that "Machinery Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property..." are exempt from the sales or use tax. This includes machinery and equipment and repair parts or replacements thereof of the machinery and equipment used exclusively and directly by a manufacturer in the printing process to manufacture tangible personal property.

(6) a) 2. Section 77.54 (2), Stats. Property such as chemicals, emulsions, acids, raw film, lubricating oils, greases, nonoffset spray, finished art, color separations, plate-ready film, other positives and negatives, flats and similar items which are consumed, destroyed or lose their identity in the manufacture of tangible personal property to be sold. For example, a printer's purchases of positives and negatives which are used to produce catalogs and shoppers guides it sells to other persons are exempt from the tax.

Example: A printer's purchases of positives and negatives which are used to produce catalogs and shoppers guides it sells to other persons are exempt from the tax.

SECTION 7. Tax 11.56 (6) (b) (intro.) is renumbered Tax 11.56 (6) (b) and amended to read:

Tax 11.56 (6) (b) The exemption under s. 77.54 (2), Stats., described in par. (a) 1. and 2., applies to property purchased by a person who does not use the property other than to provide it to a manufacturer described in par. (a) for use by the manufacturer in manufacturing tangible personal property to be sold. The exemption under s. 77.54 (2), Stats., does not apply if the manufactured tangible personal property is not to be sold by the manufacturer to its customer or by the customer. Examples of nontaxable purchases include:

Examples: 1) A paper manufacturer's purchases of negatives which it transfers to a printer, who uses the negatives to produce printing which the printer sells to the paper manufacturer are exempt from the tax.
2) An advertising agency's purchases of color separations which are furnished to a commercial printer who uses the color separations to produce advertising material the printer sells to the advertising agency are exempt from the tax.

SECTION 8. Tax 11.56 (6) (b) 1. and 2. are repealed.

SECTION 9. Tax 11.56 (6) (c) and (7) (b) are renumbered Tax 11.56 (7) (b) and (c) and amended to read:

Tax 11.56 (7) (b) Wisconsin sales or use tax is not imposed on raw materials that would otherwise be subject to use tax under s. 77.53 (1), Stats., purchased by a publisher or printer of printed materials if both of the following conditions are met:

1. The raw materials are processed, fabricated or manufactured into, attached to or incorporated into printed materials.
2. The resulting printed materials will be shipped outside Wisconsin for use transported and used solely outside Wisconsin.

(c) The tax applies to purchases of artwork, single color or multicolor separations, negatives, flats and similar items if those purchases are used in the manufacture of tangible personal property not to be sold, other than items exempt under par. (a) or (b). A printer who does not supply paper used in printing tangible personal property is not selling tangible personal property but rather, is selling a service.

Note to Revisor: 1) Move the examples at the end of s. Tax 11.56 (6) (c) before renumbering to the end of Tax 11.56 (7) (b) as renumbered, and in the second sentence in example 2 insert the word “not” between “is” and “subject.” In addition, add example 3 to Tax 11.56 (7) (b) as renumbered, as follows:

3) Company B purchases finished artwork from an advertising agency. The artwork and paper are provided to a printer who will print catalogs for Company B. The catalogs are provided without charge to customers outside Wisconsin. The charge by the advertising agency to Company B is exempt from Wisconsin sales and use tax even though the printer is not selling tangible personal property because the finished artwork is used for processing, fabricating or manufacturing printed material that is transported and used solely outside Wisconsin.

2) *Change the introductory phrase for the examples at the end of s. Tax 11.56 (7) (a) to read as follows:*

Examples. Examples of nontaxable purchases for use in manufacturing printed matter include: 1)

3) *Replace example 2 at the end of Tax 11.56 (7) (c), as renumbered, with the following example:*

2) Company B purchases finished artwork from an advertising agency. The artwork and paper are provided to a printer who will print catalogs for Company B. The catalogs are provided without charge to customers in Wisconsin. The charge by the advertising agency to Company B is subject to Wisconsin sales and use tax. The exemption under s. 77.54 (2), Stats. does not apply because the printer is not selling tangible personal property and the exemption under s. 77.54 (43), Stats. does not apply because the printed material is used in Wisconsin.

4) *Replace the first note at the end of s. Tax 11.56 with the following note:*

Note: Section Tax 11.56 interprets ss. 77.51 (8), (11) and (14) (h), 77.52 (1) and (2) (a) 11. and 77.54 (2), (2m), (6) (a) and (b) and (43), Stats.

5) *In the second note at the end of s. Tax 11.56, remove the word “and” before part (c), and at the end add part (d) as follows:*

; and (d) The sales and use tax exemption for raw materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27.

Initial Regulatory Flexibility Analysis

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

The rule order updates the Wisconsin Administrative Code with respect to firms engaged in manufacturing printed materials. These changes conform to current law and reflect the Department's position; thus, they do not have a fiscal effect.

Notice of Hearing ***Transportation***

Notice is hereby given that pursuant to s. 344.42, Stats., as created by 1997 Wis. Act 27, and interpreting s. 344.42, Stats., the Department of Transportation will hold a public hearing at the time and place indicated below to consider the creation of ch. Trans 197, Wis. Adm. Code, relating to fees charged for filing of proof of insurance forms with the Division of Motor Vehicles by non-electronic means.

Hearing Information

September 21, 1998	Room 421
Monday	Hill Farms State Trans. Bldg.
10:00 a.m.	4802 Sheboygan Ave.
	MADISON, WI

Parking for people with disabilities and an accessible entrance are available on the north side of the Hill Farms State Transportation Building.

An interpreter for the hearing-impaired will be available on request for this hearing. Please make reservations for a hearing interpreter 10 days prior to the hearing.

Written Comments

The public record on this proposed rule-making will be held open until close of business **September 21, 1998**, to permit the submission of written comments from people unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to:

Richard Kleist
Compliance and Restoration Section, Room 301
Department of Transportation
P. O. Box 7917
Madison, WI 53707-7917

Analysis Prepared by the Wisconsin Department of Transportation

Statutory authority: s. 344.42, Stats., as created by 1997 Wis. Act 27.

Statute interpreted: s. 344.42, Stats., as created by 1997 Wis. Act 27.

General Summary of Proposed Rule. This proposed rule making is intended to codify procedures for collection and auditing of fees charged to insurers under s. 344.42, Stats.

Section 344.42, Stats., imposes a \$1.50 fee for filing SR-22 (certifications of proof of insurance) or SR-26s (insurance cancellation notices) in paper rather than electronic form if the insurer files more than 1000 certifications in a year. To determine whether an insurer meets the 1000 certification in a year requirement, all SR-22 and SR-26 filings are counted.

The \$1.50 fee per “paper” filing fee is imposed on insurers who exceed that 1000 certification threshold. No fee will be assessed for “on behalf” filings made by employers or parents on behalf of employees or children under s. 343.38, Stats. The Department’s computer systems are unable to accept those types of filings electronically.

The Department proposes to bill insurers twice per year for paper filings. Payment is due 30 days after billing. Interest accrues on unpaid balances, and the Department may refuse to accept additional filings from an insurer that fails to pay the fees imposed under s. 344.42, Stats.

Fiscal Estimate

This proposed rule will clarify the fee collection process used by the Department. This proposed rule will have no adverse fiscal effect on state or local governments.

Initial Regulatory Flexibility Analysis

This proposed rule will not have any adverse effect on small businesses, except to the extent that s. 342.42, as created by 1997 Wis. Act 27, imposes fees on businesses that submit more than 1000 insurance filings to the Department in a year and do not use electronic systems to make the filings.

Copies of Proposed Rule

Copies of this proposed rule are available without cost upon request from:

Compliance and Restoration Section, Room 301
Telephone (608) 266-2261
Wis. Dept. of Transportation
4802 Sheboygan Ave.
P.O. Box 7917
Madison, WI 53707-7917

Contact People

People having questions about this proposed rule may write or call:

Richard Kleist, telephone (608) 264-7029
Compliance & Restoration Section
Wis. Dept. of Transportation
P.O. Box 7917
Madison, WI 53707-7917

Legal questions may be addressed to:

John Sobotik, Assistant General Counsel
Telephone (608) 267-9320
Office of General Counsel
Wis. Dept. of Transportation
P.O. Box 7910
Madison, WI 53707-7910

Alternate formats of the proposed rule will be provided to individuals at their request.

***NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE,
UNDER S. 227.19, STATS.***

Please check the Bulletin of Proceedings for further information on a particular rule.

Commerce ([CR 98-74](#)):

Ch. Comm 115 – Relating to the community-based economic development program.

Health & Family Services ([CR 98-47](#)):

S. HFS 196.03 (22) (e), (f) and (g) and Note – Relating to exemption of concession stands at locally-sponsored sporting events from being regulated as restaurants.

Veterinary Examining Board ([CR 98-9](#)):

Chs. VE 1 to 10 – Relating to veterinarians and veterinary technicians.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rules.

Agriculture, Trade & Consumer Protection (CR 98-14):

An order affecting chs. ATP 32, 33 and 35, relating to fertilizer bulk storage, pesticide bulk storage and the agricultural chemical cleanup program.

Effective 10-01-98.

Employee Trust Funds (CR 98-50):

An order creating ch. ETF 52, relating to the administration of the duty disability benefit program under s. 40.65, Stats.

Effective 10-01-98.

Health and Family Services (CR 97-126):

An order repealing and recreating s. HSS 45.05 (11) and s. HFS 46.06 (11), relating to outdoor play space for children attending day care centers.

Effective 10-01-98.

Insurance, Commissioner of (CR 98-15):

An order creating s. Ins 3.70, relating to aggregating creditable coverage for the state Health Insurance Risk-Sharing Plan (HIRSP), pursuant to s. 149.10 (2t) (a), Stats.

Effective 10-01-98.

Natural Resources (CR 98-23):

An order affecting chs. NR 20 and 26 and ss. NR 21.04, 23.05 and 25.10, relating to recreational and commercial fishing regulations and fish refuges on the inland, outlying and boundary waters.

Effective 04-01-99.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

*The following administrative rule orders have been adopted and published in the **August 31, 1998 Wisconsin Administrative Register**. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

For subscription information, contact Document Sales at (608) 266-3358.

Arts Board (CR 98-13):

An order creating chs. AB 1 to 4, relating to the criteria and procedures under which the Wisconsin Arts Board administers the funds available for grants to individual artists and arts organizations and administers the program of arts in public buildings.

Effective 09-01-98.

Elections Board (CR 98-51):

An order creating s. ElBd 6.05, relating to filing campaign finance reports by electronic transmission.

Effective 09-01-98.

Health and Family Services (CR 98-35):

An order affecting ss. HFS 172.04, 175.04, 178.05, 195.04, 196.04, 197.04 and 198.04, relating to permit fees and related fees, including a one-time technology improvement surcharge, for the operation of public swimming pools, recreational and educational camps, campgrounds, hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments and food and beverage vending operations and commissaries.

Effective 09-01-98.

Health and Family Services (CR 98-36):

An order affecting ss. HSS 138.01, 138.03, 138.04 and 138.05, relating to subsidized health insurance premiums for people with human immunodeficiency virus (HIV) infection.

Effective 09-01-98.

Insurance (CR 98-48):

An order affecting ss. Ins 17.01, 17.28 and 17.35, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1998, to limit fund fee refund requests to the current and immediate prior year only, and to establish standards for the application of the aggregate underlying liability limits upon the termination of a claims-made policy.

Effective 09-01-98.

University of Wisconsin System (CR 97-149):

An order affecting s. UWS 18.06, relating to conduct on University lands.

Effective 09-01-98.

Workforce Development (CR 98-32):

An order amending s. DWD 290.155 and repealing and recreating s. DWD 290.15 and repealing ch. DWD 292, relating to the adjustment of the minimum estimated project costs for the application of the requirement to obtain a determination of prevailing wage rates for workers employed on state or local public works projects and the repeal of obsolete rules.

Effective 09-01-98.

SECTIONS AFFECTED BY RULE REVISIONS AND CORRECTIONS

The following administrative rule revisions and corrections have taken place in August, 1998, and will be effective September 1, 1998. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

REVISIONS

Arts Board:

Chs. AB 1 to 4 (entire chapters)

Elections Board:

Ch. ElBd 6

S. ElBd 6.05 (entire section)

Health & Family Services:

Health, Chs. HFS/HSS 110--

Ch. HFS 138

S. HFS 138.01 (entire section)

S. HFS 138.03 (entire section)

S. HFS 138.04 (1) (b), (d), (e), (f) to (h) and (i),
(2) (a) and (b) and (5)

S. HFS 138.05 (1) (a) to (c), (d), (e), (f), (g) and (h)
and (2)

Ch. HFS 172

S. HFS 172.04 (1m)

Ch. HFS 175

S. HFS 175.04 (1m)

Ch. HFS 178

S. HFS 178.05 (1m)

Ch. HFS 195

S. HFS 195.04 (1m) and (3)

Ch. HFS 196

S. HFS 196.04 (1m)

Ch. HFS 197

S. HFS 197.04 (1m)

Ch. HFS 198

S. HFS 198.04 (1m)

Insurance:

Ch. Ins 17

S. Ins 17.01 (3)

S. Ins 17.28 (4) (cm), (6) and (6a)

S. Ins 17.35 (2b) (b), (c) and (d)

University of Wisconsin System:

Ch. UWS 18

S. UWS 18.06 (11), (14), (33) (d) to (f), (34), (35),
(38), (41) and (42) to (50)

Workforce Development:

Ch. DWD 290

S. DWD 290.15 (entire section)

S. DWD 290.155 (entire section)

Ch. DWD 292 (entire chapter)

EDITORIAL CORRECTIONS

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing:

Health & Family Services:

Health, Chs. HFS/HSS 110--

Ch. HFS 172 had corrections made under s. 13.93
(2m) (b) 7., Stats.

Ch. HFS 175

S. HFS 175.07 (4) and (7)

Ch. HFS 178

S. HFS 178.03 (1)

S. HFS 178.07 (1) (b)

S. HFS 178.09 (1) (a) and (2)

S. HFS 178.16 (3)

Ch. HFS 190 was renumbered from ch. HSS 190
under s. 13.93 (2m) (b) 1., Stats., and corrections
made under s. 13.93 (2m) (b) 6. and 7., Stats.

Ch. HFS 192 was renumbered from ch. HSS 192
under s. 13.93 (2m) (b) 1., Stats., and corrections
made under s. 13.93 (2m) (b) 6. and 7., Stats.

Ch. HFS 195

S. HFS 195.05 (5) (e)

S. HFS 195.09 (1)

Ch. HFS 196

S. HFS 196.14 (8) and (9)

Ch. HFS 197

S. HFS 197.05 (2) and (3)

Ch. HFS 198

S. HFS 198.14 (1) (b)

ERRATA

Several sections have been reprinted to correct printing errors such as dropped copy, and are indicated in the following listing:

Chiropractic Examining Board:

Ch. Chir 5 reprinted to correct a spelling error.

Tax Appeals Commission:

Ch. TA 1 reprinted to correct addresses.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Arts Board (CR 98-13)

Chs. AB 1 to 4 – The criteria and procedures under which the Wisconsin Arts Board shall administer the funds available for grants to individual artists and arts organizations, and to administer the program of arts in public buildings.

Summary of Final Regulatory Flexibility Analysis:

1. Types of small businesses affected by the rule: None.
2. The proposed reporting, bookkeeping and other procedures required for compliance with the rule: None.
3. The types of professional skills necessary for compliance with the rule: None.

Summary of Comments:

No comments were reported.

2. Elections Board (CR 98-51)

Ch. ElBd 6 – Filing campaign finance reports in electronic format.

Summary of Final Regulatory Flexibility Analysis:

The creation of this rule does not affect business.

Summary of Comments:

No comments were reported.

3. Health & Family Services (CR 98-36)

Ch. HSS 138 – Subsidized health insurance premiums for certain persons with human immunodeficiency virus (HIV) infection.

Summary of Final Regulatory Flexibility Analysis:

These rule changes apply to certain persons with HIV infection and to the Department. they will not directly affect small businesses as “small business” is defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments.

4. Health and Family Services (CR 98-035)

Chs. HFS 172, 175, 178 and 195 to 198 — Relating to increases in permit fees and related fees and a one-time technology improvement surcharge for the operation of Department-regulated public swimming pools, camps, campgrounds, hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments and food and beverage vending operations and commissaries.

Summary of Final Regulatory Flexibility Analysis:

Most of the 16,051 facilities affected by the fee increases and technology improvement surcharge are small businesses as “small business” is defined in s. 227.114 (1) (a), Stats.

The order amends the Department’s rules to provide for an increase of about 18% in permit fees, a \$25 increase in the penalty fee when a permit fee is paid late and an increase ranging from \$70 to \$220 in the preinspection fee before issuance of the initial permit (this fee does not apply to swimming pools, camps, campgrounds or vending machines), and a one-time technology improvement surcharge of \$15 to \$25 to be paid by each permit holder which will enable the Department to update its computerized information and processing system for the regulatory program.

The regulatory program is operated exclusively on the basis of fee revenue.

The fee increases and one-time technology improvement surcharge will enable the Department to maintain this regulatory program at its current levels for frequency of routine inspections to protect public health, responding promptly to complaints from the public and undertaking necessary enforcement action, and to modernize its permit issuance and information system.

Some variation is provided for in the amount of a permit fee and the technology improvement surcharge, based on the number of sites for a campground, the number of rooms in a hotel or motel, and both the type and seating capacity of a restaurant.

The amount of a permit fee as well as the amount of a preinspection fee reflect the costs of regulation, in particular the costs of inspecting a facility.

No comments were received at the Department’s public hearings on the proposed rule changes.

Summary of Comments:

No comments were received.

5. Insurance (CR 98-48)

Ch. Ins 17 – Annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1998.

Summary of Final Regulatory Flexibility Analysis:

The Office of the Commissioner of Insurance has determined that this rule not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees:

The legislative standing committees had no comments on this rule.

6. Workforce Development (CR 98-32)

SS. DWD 290.15 and 290.155 – Minimum estimated project costs relating to prevailing wage rates for state of local public works projects.

Summary of Final Regulatory Flexibility Analysis:

Small businesses are affected by this rule change only to the extent that it raises the minimum cost threshold for the application of the prevailing age law to public works projects. There will either be no change in the regulatory impact on small businesses (if a particular project is still covered after the rule change) or there will be a positive change (if a particular project is not covered).

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Labor and Employment and the Senate Committee on Human Resources, Labor, Tourism, Veterans and Military Affairs. There were no comments.

7. University of Wisconsin System (CR 97-149)

Ch. UWS 18 – Conduct on university lands.

Summary of Final Regulatory Flexibility Analysis:

The revisions in ch. UWS 18 will not affect small businesses.

Summary of Comments:

No comments were reported.

EXECUTIVE ORDERS

The following is a listing of recent Executive Orders issued by the Governor.

Executive Order 340. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for the Brave Men and Women of the Armed Forces of the United States Who Lost Their Lives in the Korean War.

Executive Order 341. Relating to a Proclamation on Year 2000 Preparedness.

Executive Order 342. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for the Late Jacob J. Chestnut and the Late John Gibson of the United States Capitol Police Department.

Executive Order 343. Relating to the Creation of a Supplementary Class of Non-Voting, Non-Statutory Members of the Wisconsin Land Council.

Executive Order 344. Relating to a Proclamation of a State of Emergency.

Executive Order 345. Relating to the Amendment of Executive Order No. 344.

Executive Order 346. Relating to a Proclamation of a State of Emergency.

Executive Order 347. Relating to a Proclamation that the Flags of the United States and the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for those Individuals Killed in the Bombing Incidents Outside the United States Embassies in Nairobi, Kenya and Dar es Salaam, Tanzania.

Executive Order 348. Relating to the Amendment of Executive order No. 346.

PUBLIC NOTICES

Public Notice

Health & Family Services

(Medical Assistance Reimbursement for Case Management Services: Targeted Case Management for Child Welfare Clients in Out-of-Home Care)

The State of Wisconsin reimburses providers for case management services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

Among providers of case management services are those who provide targeted case management for families with children up to the age of 21 who are at risk of physical, mental, or emotional dysfunction. The recipients of this service make up what is called Target Group N.

The Wisconsin Department of Health and Family Services is proposing to modify the rate methodology for targeted case management (TCM) services delivered by the Bureau of Milwaukee Child Welfare or its subcontractors for those clients in Target Group N where the child has been placed in substitute (out-of-home) care within Milwaukee County. The Department's proposal involves no change in the definition of the already existing group and the benefits remain the same.

The state's estimate of any expected increase or decrease in annual aggregate Medicaid expenditures shows an increase of \$17,814,708 (Federal Financial Participation-FFP \$10,482,174) in state fiscal year (SFY) '98 and \$35,629,416 (FFP \$20,964,348) in SFY '99. A decrease would take place in Title IV-E expenditures of \$12,470,296 (FFP \$6,235,148) in SFY '98 and \$24,940,591 (FFP \$12,470,296) in SFY '99.

The billing process will be established in such a manner as to prevent the processing of duplicate billings for the same client for the same service period. This will be accomplished by installing edits between procedure codes in the Wisconsin Medicaid Management Information System (MMIS) system. The methodology also contains a provision for adjusting the rate to an actual cost basis after completion of the federal fiscal year. In addition, amendments are being proposed to the Department's Cost Allocation Plan to ensure avoidance of duplicate claims for TCM and Title IV-E.

The Department is changing its methods and standards in this manner because this is a more efficient and comprehensive way to track the time expended in delivering these case management services.

The methodology uses the federally approved Random Moment Time Study (RMTS) as a tool in developing the monthly rate per client. Initially the Department will implement the new rate methodology in Milwaukee effective April 1, 1998. Based on legislation and other factors, the Department may implement the methodology on a statewide basis.

Proposed Change

The proposed change is to:

- Create a new rate methodology which will employ the Random Moment Time Study (RMTS) as a tool in developing the monthly rate per client for targeted case management services.

Copies of the Available Proposed Changes

A copy of the proposed change may be obtained free of charge by calling or writing as follows:

Regular Mail

Attention: State Plan Coordinator
Bureau of Health Care Financing
P.O. Box 309
Madison, WI 53701-0309

Phone

James Johnston
Policy Section Chief
(608) 267-9474

FAX

(608) 266-1096

Attention: State Plan Coordinator

E-Mail

matana@dhfs.state.wi.us

A copy of the proposed change are available for review at the main office of any county department of social services or human services.

Written Comments

Written comments are welcome. Written comments on the proposed changes may be sent by FAX, e-mail, or regular mail to the Bureau of Health Care Financing. The FAX number is (608) 266-1096. The e-mail address is matana@dhfs.state.wi.us. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

The written comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 250 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology, based on comments received.

Public Notice

Natural Resources

(Environmental Protection – WPDES, Chs. NR 200–)

Notice of intent to implement and enforce federal pretreatment standards and requirements related to General Pretreatment Regulations, Pesticide Chemicals, Leather Tanning and Finishing, and Pulp, Paper, and Paperboard Manufacturing pursuant to s. NR 211.34 (2), Wis. Adm. Code.

The Department of Natural Resources will implement and enforce the following federal regulations relating to wastewater pretreatment standards and requirements that limit concentrations or quantities of wastewater pollutants that may be introduced into publicly-owned treatment works. These standards and requirements will be implemented and enforced as of one of the federally-enforced compliance dates or July 1, 1998, whichever date is later; November 6, 1999 for pesticide chemicals; April 16, 2001 for pulp, paper, and paperboard. As provided in s. NR 211.34 (2), Wis. Adm. Code, the Department of Natural Resources will adopt these standards and requirements into the Wisconsin Administrative Code as soon as possible.

- | | |
|---|---|
| 1. <u>General Pretreatment Regulation Category</u>
(Codified in 40 CFR part 403)
60 FR 54768–54769 (1995)
61 FR 15660 (1996)
62 FR 38414–38415 (1997) | Amendments to standards and limitations for industrial
wastewater discharges for existing and new sources. |
| 2. <u>Pesticide Chemicals Category</u>
(Codified in 40 CFR part 455)
61 FR 57548–57566 (1996) | Adoption of standards and limitations for industrial
wastewater discharges for existing and new sources. |
| 3. <u>Leather Tanning and Finishing Category</u>
(Codified in 40 CFR part 425)
61 FR 35684–35685 (1996) | Amendments to standards and limitations for industrial
wastewater discharges for existing and new sources. |
| 4. <u>Pulp, Paper, and Paperboard Manufacturing Category</u>
(Codified in 40 CFR part 430)
63 FR 18636–18751 (1998) | Adoption of standards and limitations for industrial
wastewater discharges for existing and new sources. |

Regulations Available

The regulations referenced above are available at:

Department of Natural Resources Central Office
101 South Webster Street
Madison, WI

Office of the Secretary of State
10th Floor, 30 West Mifflin Street
Madison, WI

Office of the Revisor of Statutes
Suite 800, 131 West Wilson Street
Madison, WI

Public Notice

Workforce Development

Revised Child Care Co–Payment Schedule under s. DWD 56.08, Wis. Adm. Code. The rule provides that adjustments to the Co–Payment Schedule shall be published in the Wisconsin Administrative Register. The newest adjustment to the schedule provides lower child care co–payment requirements for foster parents, kinship care parents, and minor teen parents who are not Learnfare participants.

See table (1998 Child Care Co–Pay Schedule) following on next page:

Child Care Co-Payment Schedule for Licensed and Certified Care

Look down the column of the appropriate family size until you find the gross family monthly income level at or just less than the family income.

Look to the right to find the appropriate co-payment by family and type of care.

[-----Gross Monthly Family Income-----]

FAMILY SIZE

2 3 4 5 6 7 8 9 10 or more

	Gross Monthly Family Income										WEEKLY LICENSED CARE CO-PAY AMOUNT					WEEKLY CERTIFIED CARE CO-PAY AMOUNT				
	FAMILY SIZE										CHILDREN IN SUBSIDIZED CARE:					CHILDREN IN SUBSIDIZED CARE:				
	2	3	4	5	6	7	8	9	10 or more	1	2	3	4	5 or more	1	2	3	4	5 or more	
70% FPL	\$633	\$796	\$960	\$1,123	\$1,286	\$1,450	\$1,613	\$1,776	\$1,940	\$5	\$9	\$14	\$18	\$23	\$3	\$6	\$10	\$13	\$16	
75% FPL	\$678	\$853	\$1,028	\$1,203	\$1,378	\$1,553	\$1,728	\$1,903	\$2,078	\$5	\$11	\$16	\$21	\$26	\$4	\$7	\$11	\$15	\$18	
80% FPL	\$723	\$910	\$1,097	\$1,283	\$1,470	\$1,657	\$1,843	\$2,030	\$2,217	\$8	\$13	\$18	\$24	\$29	\$6	\$9	\$13	\$17	\$20	
85% FPL	\$769	\$967	\$1,165	\$1,364	\$1,562	\$1,760	\$1,959	\$2,157	\$2,355	\$11	\$16	\$21	\$26	\$32	\$7	\$11	\$15	\$18	\$22	
90% FPL	\$814	\$1,024	\$1,234	\$1,444	\$1,654	\$1,864	\$2,074	\$2,284	\$2,494	\$13	\$20	\$26	\$33	\$39	\$9	\$14	\$18	\$23	\$28	
95% FPL	\$859	\$1,081	\$1,302	\$1,524	\$1,746	\$1,967	\$2,189	\$2,411	\$2,632	\$16	\$24	\$32	\$39	\$48	\$11	\$17	\$22	\$28	\$33	
100% FPL	\$904	\$1,138	\$1,371	\$1,604	\$1,838	\$2,071	\$2,304	\$2,538	\$2,771	\$18	\$26	\$34	\$42	\$50	\$13	\$18	\$24	\$30	\$35	
105% FPL	\$949	\$1,194	\$1,439	\$1,684	\$1,929	\$2,174	\$2,419	\$2,664	\$2,909	\$21	\$29	\$37	\$45	\$53	\$15	\$20	\$26	\$31	\$37	
110% FPL	\$995	\$1,251	\$1,508	\$1,765	\$2,021	\$2,278	\$2,535	\$2,791	\$3,048	\$24	\$32	\$39	\$48	\$55	\$17	\$22	\$28	\$33	\$39	
115% FPL	\$1,040	\$1,308	\$1,576	\$1,845	\$2,113	\$2,381	\$2,650	\$2,918	\$3,186	\$26	\$34	\$42	\$50	\$58	\$18	\$24	\$30	\$35	\$41	
120% FPL	\$1,085	\$1,365	\$1,645	\$1,925	\$2,205	\$2,485	\$2,765	\$3,045	\$3,325	\$29	\$37	\$45	\$53	\$61	\$20	\$26	\$31	\$37	\$42	
125% FPL	\$1,130	\$1,422	\$1,714	\$2,005	\$2,297	\$2,589	\$2,880	\$3,172	\$3,464	\$32	\$39	\$48	\$55	\$63	\$22	\$28	\$33	\$39	\$44	
130% FPL	\$1,175	\$1,479	\$1,782	\$2,085	\$2,389	\$2,692	\$2,995	\$3,299	\$3,602	\$34	\$44	\$53	\$62	\$71	\$24	\$30	\$37	\$43	\$50	
135% FPL	\$1,221	\$1,536	\$1,851	\$2,166	\$2,481	\$2,796	\$3,111	\$3,426	\$3,741	\$37	\$48	\$58	\$69	\$79	\$26	\$33	\$41	\$48	\$55	
140% FPL	\$1,266	\$1,593	\$1,919	\$2,246	\$2,573	\$2,899	\$3,226	\$3,553	\$3,879	\$39	\$50	\$61	\$71	\$82	\$28	\$35	\$42	\$50	\$57	
145% FPL	\$1,311	\$1,649	\$1,988	\$2,326	\$2,664	\$3,003	\$3,341	\$3,679	\$4,018	\$42	\$53	\$63	\$74	\$84	\$30	\$37	\$44	\$52	\$59	
150% FPL	\$1,356	\$1,706	\$2,056	\$2,406	\$2,756	\$3,106	\$3,456	\$3,806	\$4,156	\$45	\$55	\$66	\$76	\$87	\$31	\$39	\$46	\$54	\$61	
155% FPL	\$1,401	\$1,763	\$2,125	\$2,486	\$2,848	\$3,210	\$3,571	\$3,933	\$4,295	\$48	\$58	\$69	\$79	\$90	\$33	\$41	\$48	\$55	\$63	
160% FPL	\$1,447	\$1,820	\$2,193	\$2,567	\$2,940	\$3,313	\$3,687	\$4,060	\$4,433	\$50	\$61	\$71	\$82	\$92	\$35	\$42	\$50	\$57	\$65	
165% FPL	\$1,492	\$1,877	\$2,262	\$2,647	\$3,032	\$3,417	\$3,802	\$4,187	\$4,572	\$51	\$63	\$74	\$84	\$95	\$36	\$44	\$52	\$59	\$66	
165% of the Federal Poverty Level																				

^^-----165% of the Federal Poverty Level-----^^

(Table continues on following page)

Child Care Co-Payment Schedule for Licensed and Certified

Care

Look down the column of the appropriate family size until you find the gross family monthly income level at or just less than the family income.

Look to the right to find the appropriate co-payment by family and type of care.

[-----Gross Monthly Family Income-----]

FAMILY SIZE

	2	3	4	5	6	7	8	9	10 or more
170% FPL	\$1,537	\$1,934	\$2,330	\$2,727	\$3,124	\$3,520	\$3,917	\$4,314	\$4,710
175% FPL	\$1,582	\$1,991	\$2,399	\$2,807	\$3,216	\$3,624	\$4,032	\$4,441	\$4,849
180% FPL	\$1,628	\$2,048	\$2,468	\$2,888	\$3,308	\$3,728	\$4,148	\$4,568	\$4,988
185% FPL	\$1,673	\$2,104	\$2,536	\$2,968	\$3,399	\$3,831	\$4,263	\$4,694	\$5,126
190% FPL	\$1,718	\$2,161	\$2,605	\$3,048	\$3,491	\$3,935	\$4,378	\$4,821	\$5,265
195% FPL	\$1,763	\$2,218	\$2,673	\$3,128	\$3,583	\$4,038	\$4,493	\$4,948	\$5,403
200% FPL	\$1,808	\$2,275	\$2,742	\$3,208	\$3,675	\$4,142	\$4,608	\$5,075	\$5,542
	<<<----- +200% of the Federal Poverty Level ----->>>								

WEEKLY LICENSED CARE CO-PAY AMOUNT		WEEKLY CERTIFIED CARE CO-PAY AMOUNT							
CHILDREN IN SUBSIDIZED CARE:		CHILDREN IN SUBSIDIZED CARE:							
1	2	3	4	5 or more	1	2	3	4	5 or more
\$53	\$66	\$76	\$87	\$98	\$37	\$46	\$54	\$61	\$68
\$54	\$68	\$79	\$90	\$100	\$38	\$48	\$55	\$63	\$70
\$56	\$70	\$82	\$92	\$103	\$39	\$50	\$57	\$65	\$72
\$58	\$72	\$84	\$95	\$105	\$40	\$52	\$59	\$66	\$74
\$59	\$74	\$87	\$98	\$108	\$42	\$54	\$61	\$68	\$76
\$61	\$76	\$90	\$100	\$111	\$43	\$55	\$63	\$70	\$78
\$63	\$78	\$92	\$103	\$113	\$44	\$57	\$65	\$72	\$79

NOTE: The copayment rate for the following categories of parents is found by selecting the lowest income line (70% FPL) and then finding the copayment listed, under either licensed care or certified care, for the appropriate number of children: foster parents, kinship care parents, and minor teen parents who are not Learnfare participants.

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